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Supreme Court of the United States

OCTOBER TERM, 1921.

NUMBER 18, ORIGINAL.

THE STATE OF OHIO,

Complainant,

vs.

THE STATE OF WEST VIRGINIA,

Defendant.

STATEMENT OF THE CASE.

This is a suit in equity, in the original jurisdiction of this court, by the State of Ohio against the State of West Virginia. The complaint is directed, as appears from the bill, against the enforcement by the State of West Virginia, of an act passed by the legislature of that state on February 12, 1919, duly approved by the governor, to be effective May 10, 1919, a copy of which statute is attached to the bill, marked "Exhibit B."

TEXT AND ANALYSIS OF THE ACT.

"Section 1. That every person engaged in furnishing, or required by law (whether statutory or common law) to furnish natural gas for public use, or for use of the public, or any part of the public, whether for domestic, industrial or other consumption, within this state, shall to the extent of his supply of said gas produced in this state, (whether produced by such person or by any other person), furnish for public use within the territory of this state, and for the use of the public and every part of the public within the territory of this state, in or from which such gas is produced, or through which said gas is transported, or which is served by such person, a supply of natural gas reasonably adequate for the purposes, whether domestic, industrial or otherwise, for which natural gas is consumed or desired to be consumed by the public, or any part of the public, within said territory in this state, and for which said consumer or consumers therein shall apply and be ready and willing to make payment at lawful rates."

Section one of this act requires every person engaged in furnishing or required by law to furnish natural gas for the use of the public within the State of West Virginia, to furnish an adequate supply of gas for all purposes, whether domestic, industrial or otherwise, for which gas is consumed or desired to be consumed by the public or any part of the public, within the State of West Virginia, in the territory where the gas is produced or through which it is transported, or which is served by such person.

"Section 2. That in case any person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this state, or for the use of the public or any part of the public within this state, shall have a production or supply of natural gas which is, or probably will be, insufficient to furnish for such use, (for the purposes, whether domestic, industrial or otherwise, for which natural gas is consumed by the public or any part of the public), within the territory in this state served by such person, then and in that event the public service commission shall have authority, and the same is hereby conferred on it, upon the application of any such person or any of his consumers within this state and after due hearing upon notice and proof to the satisfaction of the commission that public convenience and necessity so require, to order any other person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this state, and producing or furnishing natural gas for public use in said territory or transporting the same through said territory, to furnish to such person having such insufficient production or supply, natural gas for the purpose of supplying such deficiency, at and during such times, upon and at such just and reasonable terms, conditions and rates, and in such amounts, as the commission shall prescribe. And whenever, after such hearing upon notice and proof, the commission shall determine that public convenience and necessity so require, the commission shall have authority to provide for and compel the establishment of a reasonable physical connection or connections between the lines, pipes or conduits of such persons having such excess supply of gas and the lines, pipes or conduits of the person having such deficiency of supply, and to require the laying and construction of such reasonable extensions of lines, pipes or conduits as may be necessary for the establishment of such physical connection or connections, and to ascertain, determine

and fix the just and reasonable terms and conditions of such connection or connections, including just and reasonable rules and regulations and provision for the payment of the costs and expense of making the same or for the apportionment of such cost and expense as may appear just and reasonable. **Provided, however,** that no person shall, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing, or required by law to furnish, natural gas for public use, except to the extent that the person so ordered to furnish natural gas shall, at the time, have a production or supply of natural gas in excess of the quantity sufficient to furnish a reasonably adequate supply to his consumers within this state; nor shall any person, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing or required by law to furnish, natural gas for public use in a territory within this state, if any when the said person having said excess shall, to the extent of such excess, be ready and willing to furnish, and within such time as the commission shall prescribe shall actually furnish, to the consumers within said territory a reasonably adequate supply of natural gas."

Section two of the act provides that any person who is engaged in furnishing gas for public use within the state of West Virginia, and whose supply of gas is insufficient to fully supply the wants of consumers, for all purposes, whether domestic, industrial or otherwise, within the territory in the State of West Virginia served by such person, may make application to the Public Service Commission of that state for an order to require any other person engaged in furnishing or required by law to furnish gas for public use within the state and producing or furnishing gas for public use in the territory or trans-

porting the same through the territory served by the person having an insufficient supply of gas, to supply the deficiency of the person having such insufficient supply. The commission is given the power to fix just and reasonable terms, conditions and rates upon which the gas shall be so furnished as well as the amount of gas to be furnished. The Commission may require the necessary physical connections to be made and make provision for the apportionment of the expense of such connections. Section two contains a proviso that no person should be required to furnish gas to another person furnishing gas to the public, unless the first person shall have a supply in excess of the quantity sufficient to adequately supply his consumers within the State of West Virginia. It provides further that if the person having such excess shall be willing to furnish an adequate supply of gas directly to the consumers of the person having such deficiency, then such person having such excess shall be permitted to supply such consumers directly instead of supplying the persons having such insufficient supply for his consumers.

"Section three. That in so far as the same shall not be in conflict with this act, all of the authority, powers, jurisdiction and duties conferred and imposed on the public service commission by the act, entitled, 'An act to create a public service commission and to prescribe its powers and duties, and to prescribe penalties for the violations of the provisions of this act,' passed February twenty-first, one thousand nine hundred and thirteen, as amended by the act entitled, 'An act to amend and re-enact sections one, two, three, four, five, nine, ten, fourteen, fifteen and twenty-two, of chapter nine of the

acts of one thousand nine hundred and thirteen, creating a public service commission, prescribing its powers and duties, and penalties for violation of the provisions of said chapter, and to add thereto six sections to be known as sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, enlarging the powers and duties of said public service commission, prescribing additional penalties and giving to the commission power to punish for contempt,' passed February tenth, one thousand nine hundred and fifteen, are hereby conferred and imposed on the public service commission in respect to the subject matter of this act, or any part thereof."

Section three of the act gives the Public Service Commission of West Virginia all of the power and authority to enforce this act which it has under the general act creating it and prescribing its powers and duties, and the amendments thereto.

"Section four. That in case of violation of any provision of this act any person aggrieved or affected thereby may complain thereof to the public service commission in like manner, and thereupon such procedure shall be had, as is provided in respect to other complaints to or before said commission, and all such proceedings and remedies may be taken or had for the enforcement or review of the order or orders of said commission, and for the punishment of the violation of such order or orders, as are provided by law in respect to other orders of said commission. In case of the violation of any provision of this act, the public service commission, or any person aggrieved or affected by such violation, in his own name, may apply to any court of competent jurisdiction by a bill for injunction, petition or writ of mandamus or other appropriate action, suit or proceeding, to compel obedience to and compliance with

this act, or to prevent the violation of this act, or any provision thereof, pending the proceedings before said commission, and thereafter until final determination of any action, suit, or proceedings for the enforcement or review of the final order of said commission; and such court shall have jurisdiction to grant the appropriate order, judgment or decree in the premises."

Section four of the act gives to any person aggrieved by the violation of any provision of the act the right to complain to the Public Service Commission and to have such proceedings for enforcement of the order of the commission or review thereof as is provided by law with respect to other orders of said Commission. It further gives to the Public Service Commission or to any aggrieved person the right to apply to any court of competent jurisdiction for injunction, mandamus, or other appropriate remedy to compel compliance with the act, pending the proceedings before said Commission, and thereafter until final determination of any action, suit or proceeding for the enforcement or review of the final order of said Commission, and confers upon such court the jurisdiction to grant the appropriate judgment, order or decree in the premises.

"Section five. That if any person subject to the provisions of this act shall fail or refuse to comply with any requirement of the commission hereunder, such person shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense; and such person, or the officers of the corporation, where such person is a corporation, may be indicted for their failure to comply with any requirement of the commission under the provisions of this act, and upon conviction thereof, may

be fined not to exceed five hundred dollars, and in the discretion of the court, confined in jail not to exceed thirty days. Every day during which any person, or any officer, agent or employe of such person, shall fail to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this act, shall constitute a separate and distinct violation of such order or direction of this act, as the case may be."

Section five imposes a fine of not less than $100 nor more than $500 for each failure or refusal to comply with any requirement of the Commission under the act and provides for the indictment of the person, or of the officers of the corporation, if such person be a corporation, for failure to comply, and provides a fine of $500 and a jail sentence, not to exceed thirty days, which may be imposed in the discretion of the court. It further provides that every day during which any person or its officers or agents shall fail to comply with the provisions of the act or any order of the Commission made under the act shall be deemed a separate and distinct violation of the act.

"Section six. That any person claiming to be damaged by any violation of this act may bring suit in his own behalf for the recovery of the damage from the person or persons so violating the same in any circuit court having jurisdiction. In any such action the court may compel the attendance of the person or persons against whom said action is brought, or any officer, director, agent or employe of such person or persons, as a witness, and also require the production of all books, papers and documents which may be useful as evidence, and in the trial thereof such witness may be compelled to testify, but any such witness shall not be prosecuted for

any offense concerning which he is compelled hereunder to testify."

Section six gives to any person aggrieved by violation of the act the right to bring suit for damages in his own name in any circuit court of the state having jurisdiction. It further provides for the compulsory attendance of witnesses and the production of books and papers which may be useful as evidence.

"**Section seven.** That the word 'person' within the meaning of this act shall be construed to mean and to include, persons, firms, and corporations."

"**Section eight.** That the sections, provisions and clauses of this act shall be deemed separable each from the other, and also in respect to the persons, firms, corporations and consumers mentioned therein or affected thereby, and if any separable part of this act be, or be held to be, unconstitutional or for any reason invalid, or unenforceable, the remaining parts thereof shall be and remain in full force and effect.

"**Section nine.** That all acts and parts of acts in conflict with this act are hereby repealed."

Sections seven, eight and **nine** of the act require no comment at this point.

THE LEGAL MEANING AND EFFECT OF THE LAW.

We believe that the legal meaning and effect of this act is as follows:

First: It imposes an absolute duty upon any person furnishing gas or required by any law of West Virginia, whether statutory or common law, to furnish gas for

public use to devote his entire supply of gas to the satisfaction of the wants and desires of all persons within the territory of the State of West Virginia in which the gas is produced or through which it is transported, or which is being served by the person in question, before he will be permitted to furnish any gas whatever to any person outside of the boundaries of the State of West Virginia. His duties within the state are not to be limited to the persons or communities which he has held himself out to serve or which he has in fact been serving in the past, but are made by this act to include also all persons in the territory where the gas is produced or through which it is transported, even though the owner of the gas may never have served or held himself out to serve either of these classes of persons.

Second: It requires any person producing or transporting or furnishing natural gas and having a supply in excess of the quantity necessary to supply his consumers **inside the State of West Virginia,** even though his supply is inadequate or not more than adequate, to supply all of his consumers both inside and outside of the State of West Virginia, to make or submit to physical connection with the pipe lines of any other person engaged in supplying gas, in the territory in which the first person shall be producing or furnishing or transporting natural gas, and to furnish to such other person all of the gas which he may have in excess of the requirements of his consumers **inside the State of West Virginia,** if such other person shall require all of such excess in order to adequately supply his consumers **inside the State of West Virginia.**

Third: The act requires that all consumers, inside the State of West Virginia, shall be given a reasonably adequate supply of natural gas, **whether** for **domestic,** industrial, or other purposes, before any gas whatever is transported outside the State of West Virginia. The act is mandatory upon the person furnishing gas, and gives no discretion either to him or to the Public Service Commission or to any other authority which could permit the person furnishing gas to supply domestic consumers outside of the state if industrial consumers inside the state were desiring gas for their use. Likewise the act places all consumers inside the state, and also all persons not on the lines of the person furnishing gas, but being located inside the state, in a position of preference over all persons outside the state, even though the persons outside the state are domestic consumers only, and have long since been such consumers, on the lines of the persons who are furnishing gas to them.

THE BILL OF COMPLAINT.

The bill of complaint recites the character of the two states, as being states of the United States of America, and that the bill was filed by the attorney general of the complainant state, pursuant to the authority of a joint resolution of the legislature of the State of Ohio, and the written direction of the governor of that state. The complainant states then, in the first division of its bill, alleges facts which are in substance as follows:

That natural gas has been for more than twenty years last past, known to exist in large quantities, of great

value, in the State of West Virginia; that many persons, including many citizens and residents of the State of Ohio, have invested capital in West Virginia in drilling wells and establishing facilities for producing, transporting and marketing gas, said gas being found in thirty-four named counties of the State of West Virginia; that much of the gas development in West Virginia has been and is being done by Ohio citizens and corporations.

The second division of the bill alleges that many cities and industrial plants in West Virginia are connected by pipe lines with the gas supply of the wells in West Virginia, or are located near to said pipe lines, and that if a reasonably adequate supply of natural gas should be furnished to all persons so located within the State of West Virginia, for all purposes, whether industrial, domestic or otherwise, then, in that event, substantially if not entirely, all of the gas produced in West Virginia would be required to meet said demands in West Virginia, the result of which would be to deny natural gas to even the preferred or domestic consumers in Ohio.

The bill of complaint further alleges that, in the early stages of gas development in West Virginia, all of the demands of all consumers in West Virginia for all purposes, were met, and there was a surplus for transportation to the State of Ohio, but that now the consumption of and demand for natural gas in West Virginia has greatly increased, and that if the statute of West Virginia, thereafter complained of, should be enforced, the transportation of gas to Ohio even for use by domestic consumers would be cut off, and such transportation would be entirely prohibited.

The third division of the bill alleges that, for more than twenty years last past, large quantities of natural gas have been transported from the State of West Virginia into the State of Ohio, for use and consumption within said state; that in the early stages of natural gas development in West Virginia, there was a small demand for the same in the State of West Virginia, and that the Ohio municipalities of Cleveland, Cincinnati, Columbus, Dayton, Akron, Canton, Hamilton, Springfield, Youngstown and many others, have either constructed plants for the distribution of natural gas, or permitted such plants to be erected by private capital, at great expense, and are dependent upon natural gas for light, heat and fuel, and for other purposes.

The fourth division of the bill of complaint alleges that many corporations and companies, of which five are named, have, at the expense of many millions of dollars, laid large trunk lines for the transportation of gas from the gas fields of West Virginia to the said cities in Ohio, and that such transportation to and the distribution, sale and use of natural gas in the said cities in Ohio have been conducted for many years last past, under contracts then and still existing between the said companies on the one hand, and the State of Ohio and its municipalities on the other; that the State of Ohio, and its inhabitants in said municipalities and elsewhere, now rely almost wholly upon the use of natural gas for light, heat and fuel, and for other purposes; that the demand for such gas is growing, and that there is now, from time to time, a shortage of gas in said state, even when the use of it is limited to

domestic purposes; that all contracts in Ohio with consumers of natural gas provide for preference to domestic consumers, and for cutting off all other classes of users in case of a shortage of supply.

The fifth division of the bill of complaint avers and charges that for many years gas has been extensively transported in interstate commerce through pipe lines in, through and among the Dominion of Canada, the states of New York, Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Missouri, Kansas, Oklahoma, Texas, Arkansas, Louisiana and other states in the United States; that there are more than five thousand miles of main trunk lines laid and operated in said states and Canada; that the transportation of West Virginia gas by pipe lines has become a great industry, with millions of dollars invested therein; that natural gas is a well established and extensively transported article of interstate commerce.

The sixth division of the bill of complaint alleges that there are now in operation in the State of Ohio, and from Ohio into West Virginia, more than one thousand miles of connecting natural gas main pipe lines; that the property value of said pipe lines is at least twenty-five million dollars, and that more than half of said pipe lines were laid for the exclusive purpose of, and are now engaged in transporting and handling natural gas produced in the State of West Virginia.

The complainant further alleges, in the seventh division of its bill of complaint that it is the owner and proprietor of seventeen state institutions established for

penal, eleemosynary, educational and governmental purposes, within the State of Ohio, which are named in the bill; that said natural gas so transported from West Virginia and used as aforesaid is also used in municipal buildings and for municipal and street lighting in the counties, townships and municipalities of the State of Ohio; that all of said gas so used in said institutions, municipalities and buildings is supplied and used under existing contracts between the State of Ohio and the political subdivisions thereof respectively, on the one hand, and the producers and distributors of natural gas who bring the same from the State of West Virginia, on the other hand; that the State of Ohio has, at great expense, provided equipment for the use of natural gas, which would have a mere salvage value if said state should be unable to continue to secure a supply of natural gas from the State of West Virginia; that the great convenience and economy of this fuel have saved the State of Ohio thousands of dollars annually; that the use of natural gas has enabled the state to better care for its abnormal persons in its institutions; that the said state used, in its said public institutions, during the year ending June 30th, 1918, a total amount of three hundred sixty-nine million, three hundred eighty-nine thousand (369,389,00) cubic feet of natural gas, of which a large proportion was obtained from the State of West Virginia; that if the said state should be deprived of its supply from the State of West Virginia, the volume and pressure of its gas supply would be insufficient for any practical use; that the citizens and residents of Ohio and other states have invested

in the natural gas business in the State of Ohio, approximately one hundred and fifty million dollars, from which investment the State of Ohio and its subdivisions receive in taxes annually large sums of money; that many citizens and residents of the State of Ohio have become bound by contracts to furnish natural gas, whose only source of natural gas supply for the fulfillment of which contracts, is from the State of West Virginia.

The eighth division of the bill of complaint alleges that the legislature of the State of West Virginia passed, on February 12th, 1919, an act, the title of which is quoted in the bill, and a copy of the full text of which act is attached to the bill, marked "Exhibit B," and made a part of the bill. The alleged substance of the act is set forth in the bill, as is also its alleged purposes, and it is alleged to be illegal and void because it offends against, and is in contravention of Clause 3 of Section 8 of Article 1 of the Constitution of the United States, and of the fourteenth amendment of the Constitution of the United States, and of Section 10 of Article 1 of the Constitution of the United States.

The ninth division of the bill avers that it is the effect and purpose of the statute complained of to require persons producing and transporting natural gas in West Virginia to devote their entire supply to the needs of consumers inside the said state, and to wholly prevent the exportation of natural gas from said state.

The tenth division of the bill alleges that the enforcement of the act would cause to the complainant state great and irreparable pecuniary loss and injury, and

would deprive more than four millions of people, being citizens and residents of the State of Ohio, of their natural gas supply, and would deprive the State of Ohio of its large income from the taxes upon gas property, and would destroy or impair the value of the property of many persons and corporations, residents of the State of Ohio, to the extent of many millions of dollars.

The bill of complaint then charges that the act of West Virginia complained of is void because it would prevent the transportation of gas in interstate commerce from West Virginia into Ohio, which the State of West Virginia is not legally empowered to do, such power being lodged in the government of the United States, and not elsewhere; and that the enforcement of the statute would cause great and irreparable injury to the rights and property of the complainant state and its citizens and residents, for which it or they would have no adequate remedy at law.

The bill of complaint then proceeds as follows:

> "In consideration whereof, and for as much as your orator and its citizens and residents, who except through representation by your orator, have no remedy and can only have adequate relief in this honorable court, your orator on its own behalf and also as the **parens patriae**. trustee, guardian and representative of that great proportion of its citizens, who are directly affected by the provisions of said law, as aforesaid, prays this honorable court to take cognizance of the several charges set forth in the premises."

The complainant then prays that the State of West Virginia be made defendant and may be compelled to

answer each and every allegation therein contained, but waiving the answer under oath; that it be adjudged and decreed that the said act or law of the State of West Virginia is illegal and void because it conflicts with and contravenes those provisions of the Constitution of the United States named in the eighth division of the bill; that it be adjudged and decreed that neither the complainant state nor its citizens and residents have an adequate remedy at law for the injury which would result from the enforcement of said act, and that such injury would be irreparable.

The complainant further prays that the defendant may be restrained by a writ of perpetual injunction, issuing out of and under the seal of this honorable court, from in any way interfering with the transportation of natural gas from and out of the State of West Virginia, for use in the State of Ohio by said state, or any of its citizens or residents, under the authority of the said act, or any act, law or statute of the State of West Virginia, or under any pretended common law right, rule of action or unwritten law of the State of West Virginia. The complainant then prays for a provisional or preliminary injunction, and formally concludes its bill.

THE ANSWER.

The State of West Virginia in its answer substantially admits all of the material allegations of the bill of complaint as to the external, physical facts. The denials contained in the answer go principally to conclusions or statements of law contained in the bill of complaint, to-

gether with the formal denial for lack of information, as to certain matters which pertain particularly to internal conditions within the State of Ohio. The answer purports to set forth some of the alleged evils sought to be remedied by the act in question which are in substance these: That West Virginia has a large production of natural gas; that a large proportion of its production is being transported out of the state, and that there is, in many communities inside the state, a shortage of gas supply, especially in winter weather. It further alleges that the gas fields and facilities in West Virginia have largely fallen into the hands of seven named corporations which have a virtual monopoly of the business of producing and transporting gas in West Virginia; that these corporations are public service companies, and have acted as such, except in so far as they have failed and refused to furnish to the public in West Virginia within the range of their pipe lines a reasonably adequate supply of gas.

The answer states that there was, at the time when the lines and facilities for the transportation of gas from West Virginia were established, a large surplus of gas beyond the demands of consumers in West Virginia, but that this condition is no longer true, and that at the present time the transportation of gas from the state makes inadequate the supply within the state.

The answer further alleges that the seven companies base their refusal to furnish additional gas within the state upon the fact that they have duties to consumers in other states, arising out of contracts or out of their duties as public utilities in such other states, while the State

of West Virginia claims that the seven companies owe a duty to furnish gas to all consumers, present and prospective, inside the state in priority to consumers of any class outside the state. This contention of the State of West Virginia appears in paragraph VI, page 30, of its answer, where this language is used:

> **"On the one hand it was insisted by said state and its people that they were entitled to a reasonably adequate gas supply to the extent, for the purposes and by the means later specified in and by the statute complained of in said bill of complaint, and that the duty of furnishing such supply rested on said seven companies as well as the other public service gas companies of West Virginia."**

It appears again in paragraph X, on page 36 of the defendant's answer, where this language is used:

> **"While this defendant admits that gas is or may be an article of interstate commerce, yet this defendant denies that gas placed in mains or pipes by public service gas companies, is either in interstate commerce or a legitimate article of interstate commerce, unless and until it has reached the point where it is no longer subject to the public service in West Virginia, and the duties imposed by law upon public service gas companies have been observed and performed by them; and denies that the requirement of the performance or observance of the duties owed by such companies is an interference with interstate commerce or a burden thereon."**

The answer then states that this issue between the said seven companies on the one hand and the State of West Virginia and its citizens on the other hand, gave rise to the legislation in question in this litigation. It admits that the consequences of the enforcement of the statute

in question will be as alleged in the bill of complaint, but denies that the consequences will be of such extent as alleged in the bill. It states that the State of Ohio may obviate to a certain extent the consequences of the legislation by

> **"The contraction by internal regulation by the State of Ohio of the territorial scope of service or distribution and of the number of its consumers."**

and says that such remedy must also ultimately be applied in West Virginia. It admits that the inconveniences, losses and other consequences would result to the State of Ohio as alleged in the bill, but alleges that similar consequences will result in West Virginia, unless the statute is upheld. The answer then alleges the constitutionality and legal validity of the statute and denies that it would, **except indirectly or incidentally**, prevent the transportation of gas in interstate commerce.

THE TAKING OF THE PROOFS.

This court, on April 20, 1920, made an order granting motions to consolidate cases numbers 23 and 24, original, October Term, 1919, being the cases of The Commonwealth of Pennsylvania, complainant, vs. The State of West Virginia, and The State of Ohio, complainant, vs. The State of West Virginia, "for the purpose of taking the proofs." The court further appointed Levi P. Cooke, Esq., of the District of Columbia, as a commissioner to take and return the testimony in these cases, with the powers of a Master in Chancery, as provided by the rules of this court, but the court ordered that said Commis-

sioner should not make any findings of fact or state any conclusions of law. The order of the court further fixed the time for the taking of the testimony.

The hearings commenced on May 11th, 1920, and continued from time to time until April 26th, 1921. Hearings were held in Pittsburgh, Pennsylvania; Columbus, Ohio; Charleston, West Virginia, and Clarksburg, West Virginia. The testimony taken, and the exhibits offered, comprise over 2,000 printed pages. **Notwithstanding this large amount of testimony, there is practically no conflict in the evidence upon any material point in the case, and hence a long and detailed discussion of the proof would be needlessly burdensome to the court.** We present, therefore, as brief a statement as possible of the facts as shown by the proofs, or admitted by the pleadings, with citations to the pages of the record, for the purpose of verification.

GENERAL TESTIMONY RELATING TO GAS PRODUCTION.

Natural gas is not found in rooms or open cavities under the earth's surface, but in the minute spaces between the grains of sand which make up sand rock. This substance is called by the profession "gas sand," but it is, in fact, sand rock. There is no regeneration of natural gas in the sands from which it has been removed. (Wyer, 869,909).

There is no reliable method of determining the existence of natural gas under the earth's surface except by puncturing the earth down to the location of the gas sand,

that is, by drilling a gas well. (Quay 10, Sullivan 196, Wyer 868). This fact makes the business of finding and producing natural gas an extremely hazardous venture. (Quary 10). Natural gas exists in the sands originally at a high pressure known as the rock pressure. This pressure varies for different wells and for different areas, and has no particular relation to the volume of gas that will flow from a well. (Wyer, page 869). This rock pressure, however, is the force by which gas is, in the first instance, severed from the soil. This process of severance is shown by Pennsylvania Exhibit 36, record, page 1578, copy of which we insert next following this page, and which exhibit is explained by the witness, Wyer, in his testimony (Record, pages 870, 871).

PENNSYLVANIA EXHIBIT 36.

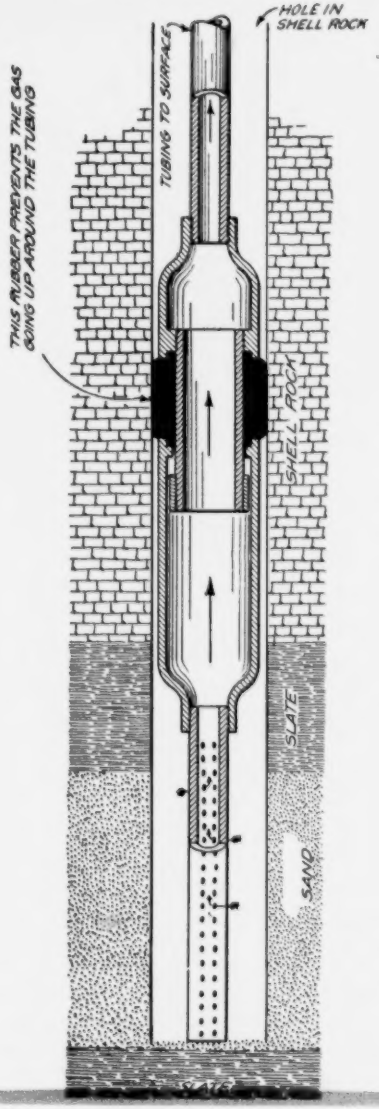
Offered at p. 870 of Printed Record by Witness Wyer.

How Natural Gas is Severed from the Soil, Brought under Control, and Delivered Into a Fixed Closed Container.

HOW NATURAL GAS IS SEVERED FROM THE SOIL, BROUGHT UNDER CONTROL, AND DELIVERED INTO A FIXED CLOSED CONTAINER

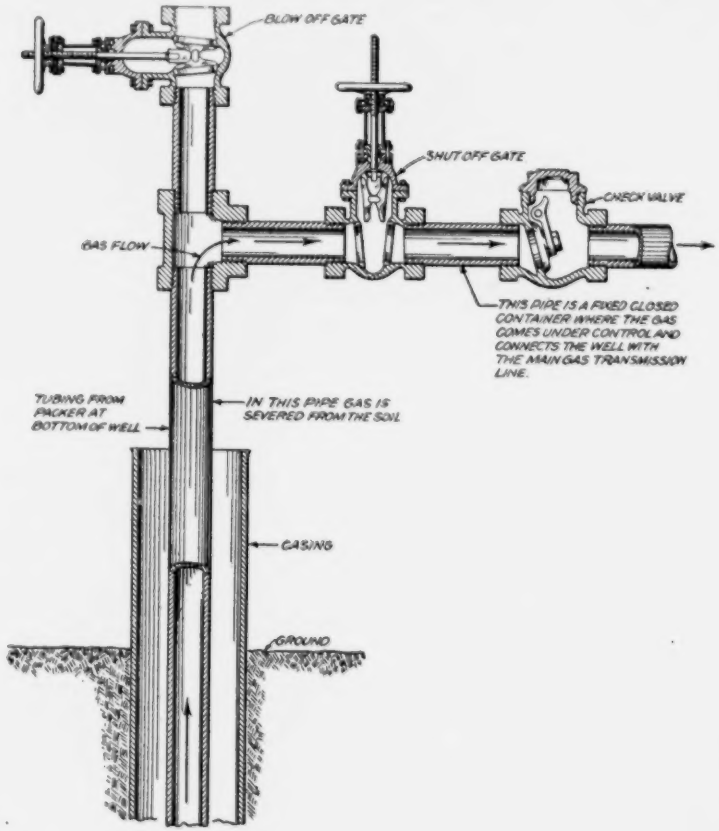
FIRST STEP

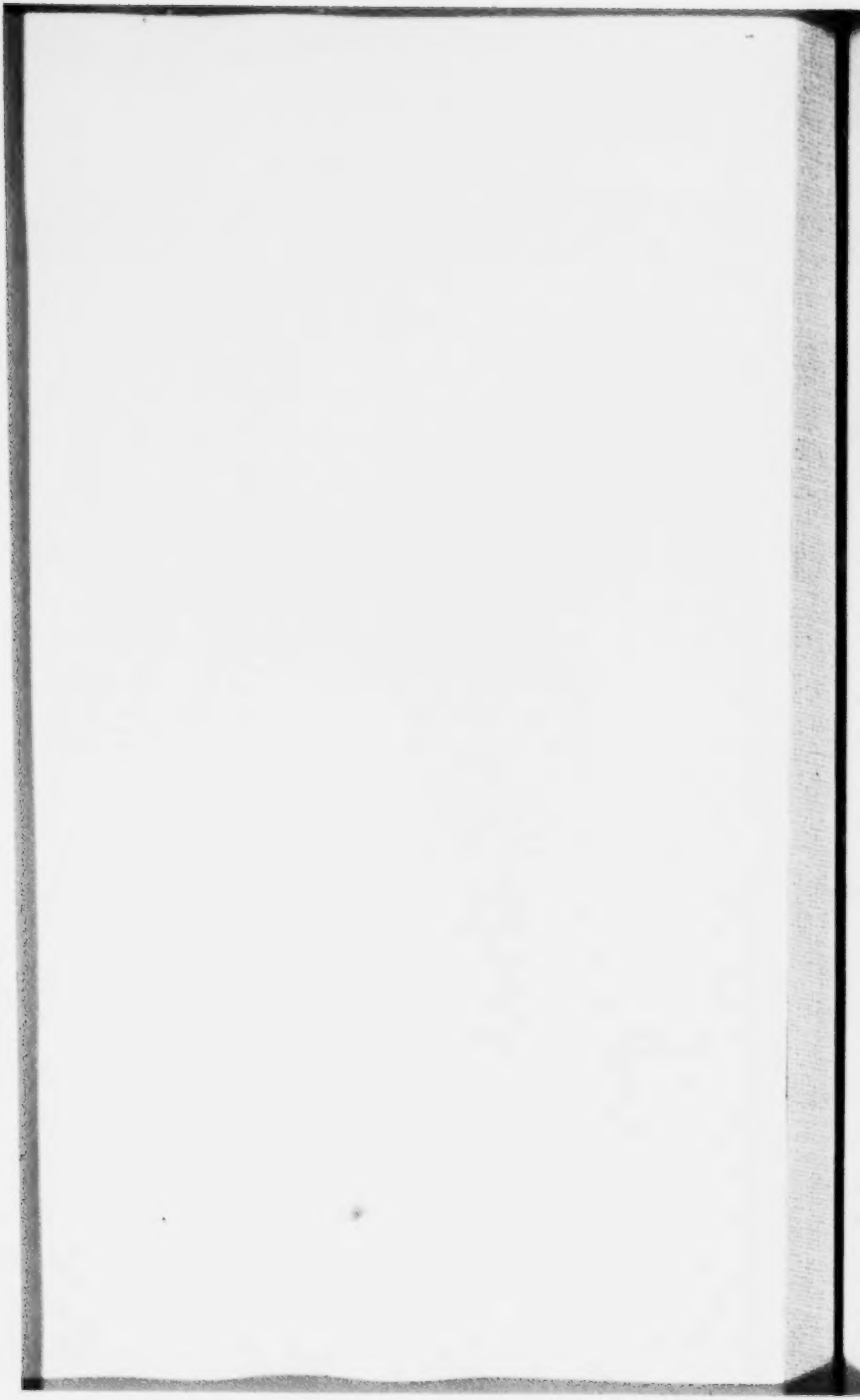
Well packer at bottom of well—usually about ½ mile below the earth's surface—where the gas is separated from the ground, is forced into the tubing, and then comes to the surface.



FINAL STEP

Well fittings above ground where the gas from the packer below as it flows up through the tubing comes under control and is delivered into the well discharge line which is a fixed closed container.


BLOW OFF GATE
SHUT OFF GATE
CHECK VALVE
GAS FLOW
THIS PIPE IS A FIXED CLOSED CONTAINER WHERE THE GAS COMES UNDER CONTROL AND CONNECTS THE WELL WITH THE MAIN GAS TRANSMISSION LINE.
TUBING FROM PACKER AT BOTTOM OF WELL
IN THIS PIPE GAS IS SEVERED FROM THE SOIL
CASING
GROUND



This exhibit and its explanation show that the process of severing natural gas from the soil and of placing it in a closed container, requires only the provision of the necessary mechanical equipment for catching the gas as it is forced by the rock pressure out of the earth through the well or aperture, and the keeping of the pressure of the pipe or container into which it flows, lower than the rock pressure which is forcing the gas out of the well. This natural or rock pressure declines as the gas is removed from the natural reservoir. (Wyer, p. 873). It thus gradually becomes so low that it is insufficient to cause the gas to flow for any considerable distance in the direction of the place of its ultimate use. Sufficient pressure then must be restored to give the gas a tendency to flow, so that it will reach its destination. This pressure is artificially supplied by natural gas compressors, the function of which is to re-compress the gas and thus supplement the declining natural rock pressure. These compressors have been in use for more than thirty years. Pennsylvania Exhibit No. 38, record, p. 1580, which is inserted next following this page, is a diagram of a natural gas compressor, prepared by the witness, Wyer, and explained by the witness on page 874 of the record.

PENNSYLVANIA EXHIBIT 38.

Offered at p. 874 of Printed Record by Witness Wyer.

Diagram Showing Action of Natural Gas Compressors as Used For Compressing Gas Through the Transmission Lines.

The action of a gas compressor is illustrated in the diagram below, where A is a reciprocating piston working in cylinder B. C and D are inlet valves to the cylinder, and E and F are discharge valves to the cylinder, drawn to their seats by the springs K K. All the gas wells are connected to the intake side of a compressor so that the pressure from the wells drives the gas to the compressor. As the piston moves in the direction of the arrow the inlet valve C is opened by the higher pressure of the gas in the intake G, and the gas then rushes from G through C into the space H. As the piston moves toward the end of its stroke the gas in space I is forced out into the discharge line J through the discharge valve E. When the piston A reaches the end of its stroke the spring K closes the valve C and on its return stroke the piston A compresses the gas in H until the pressure is great enough to open the discharge valve F and thereby drive the gas out into the discharge line J.

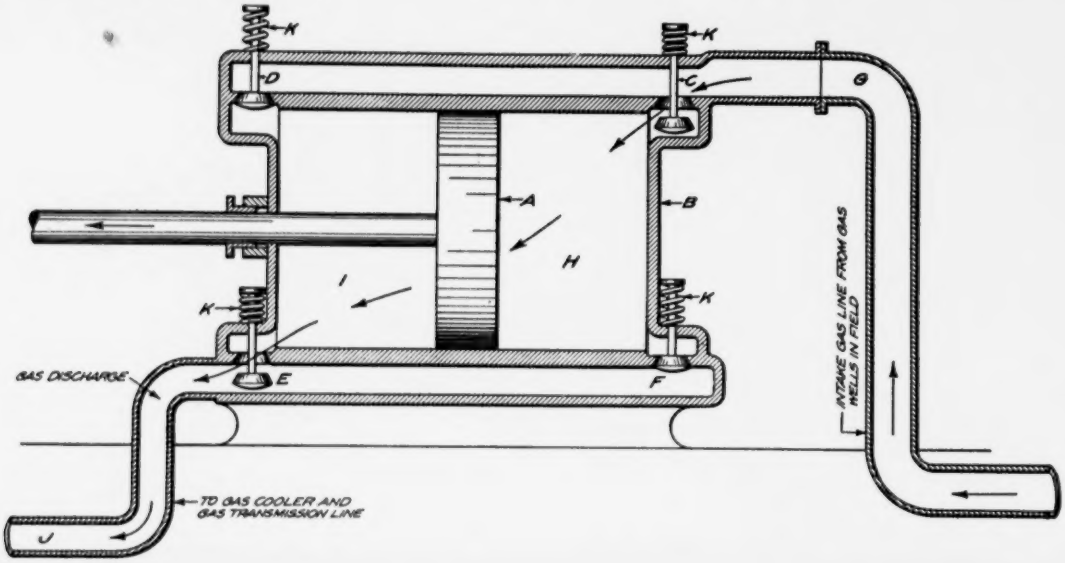


DIAGRAM SHOWING ACTION OF NATURAL GAS COMPRESSOR AS USED FOR COMPRESSING GAS FOR TRANSMISSION THROUGH LINES

This exhibit and explanation show simply a machine by which the gas is taken in through valves on the low pressure side of the machine, compressed by pistons and sent out at a higher pressure through a valve on the opposite side of the machine. It would be impracticable to market natural gas at any considerable distance from the point of its production without the use of a compressing device. (Record, p. 875.) Some of these compressor stations located in West Virginia have thousands of horsepower which impart the supplemental energy which transmits the gas through West Virginia and thence throughout all the journey to the house fixtures of consumers located in municipalities in Pennsylvania and Ohio. In some instances, for instance, where West Virginia gas is transmitted through West Virginia and Ohio to cities in Indiana, additional compressing stations are necessary to impart the required pressure for the ultimate delivery.

The gas producing territory involved in this action lies within the area known as the Appalachian field, which, in a general sense, includes Pennsylvania, Ohio, West Virginia, Kentucky and Indiana. (Record, page 60). It was first discovered in this field, not by persons searching for it, but by persons drilling for oil, who, upon puncturing the earth, found a deposit of gas instead of the oil for which they were drilling. It was considered a hindrance and annoyance, as well as a source of considerable danger to oil operators, when they found it. Their practice was to conduct it through pipes to a safe distance and there ignite it and permit it to burn in the open.

Later, it was used by persons near the wells, they burning it in rude burners. The supply was thought to be inexhaustible and the gas was grossly wasted. However, it soon became apparent that the supply of gas was being depleted, and meters were installed, over the consumers' protest; also better types of burners were invented, which effected a saving of gas and increased its efficiency. (Quay, pages 18, 19.)

GAS DEVELOPMENT IN WEST VIRGINIA.

The production of gas in the State of West Virginia originated in substantially the same way; that is, as a by-product accidentally discovered in the search for oil. The South Penn Oil Company was the pioneer operator for oil in West Virginia. Many of the wells which it drilled produced gas instead of oil. It endeavored to find a market for this gas in West Virginia, and its owners formed a corporation, called The Flaggy Meadow Gas Company, to take this gas and supply it to the then small West Virginia towns. Later, the same owners, still having a large surplus of gas, formed another corporation, known as the Mountain State Gas Company, for the purpose of carrying the gas to the river towns, such as Sistersville and Parkersburg. The amount of gas produced by these companies was, however, so large and was accumulating so fast, that these outlets for it were entirely insufficient, and hence further provision had to be made for a more distant market. In the meantime, before these outside markets were established, billions of cubic feet of gas were blown into the air and wasted because there was no

market for the gas and no facilities for reaching a market. (Record, p. 331). The logical places for such market were the towns in the States of Ohio and Pennsylvania which were closest to this source of production. In 1898 The Hope Natural Gas Company, now one of the largest producers and transporters of natural gas, was formed for the purpose of taking over the gas wells and gas territory of the South Penn Oil Company and marketing that gas through a pipe line to be laid from West Virginia fields to cities in Ohio.

Later, The Reserve Gas Company was formed for the purpose of producing gas and transporting it to the Ohio river, from whence it would be taken through two lines to Sugar Grove, Ohio, from which place it could be distributed to its ultimate destination, in the State of Ohio. The Connecting Gas Company was formed by the same interests who formed the Reserve Gas Company, solely for the purpose of transporting this gas from the Ohio river to Sugar Grove, Fairfield County, Ohio. This entire plan was carried out and has been for years in operation.

The formation of these companies is described in the testimony of the witness, Corrin,, record, pages 322, 323, 324, 325. They were formed for the purpose of making it possible to save and utilize the natural gas which would otherwise have been wasted because there was no demand for it in the vicinity of its production.

> "Every town that they could get in West Virginia was being supplied. They were supplying all the industries that there were to be supplied, and these wells were being drilled continuously in a search

for oil and were either being shut in or being abandoned, and that was the only way they had to dispose of this gas—was to look for some market outside of the state, which they did." Corrin, page 331.

After these lines were established and the value of the gas for light, heat and fuel, as well as the opportunity to place it at the disposal of a consumer who desired it, was assured, wells were drilled for the sole purpose of discovering and producing gas, instead of, as originally, being drilled merely for the production of oil, and incidentally producing gas.

After referring to the pioneer operations in West Virginia by outside capital, above referred to, the witness, on page 333 of the record, states:

> "They certainly were the pioneers, there is no question about it; and if it hadn't been for these companies, or companies similar to them, with a good backing of capital, why, I don't think that West Virginia would have been advanced to where it is today. In fact, I think they are responsible for the advancement of West Virginia twenty-five years. As a sample of that, when I first started to work for the South Penn Oil Company, over 90 per cent. of the land, the titles to which were examined, had liens of some kind against it. Today there isn't 1 per cent. in the oil and gas counties."

Many other companies secured gas territory in West Virginia and constructed great pipe line systems to market gas in Ohio, as hereinafter described.

The supply of gas was adequate, both for consumption inside the State of West Virginia and for transportation to other states, until during the time of the world war in

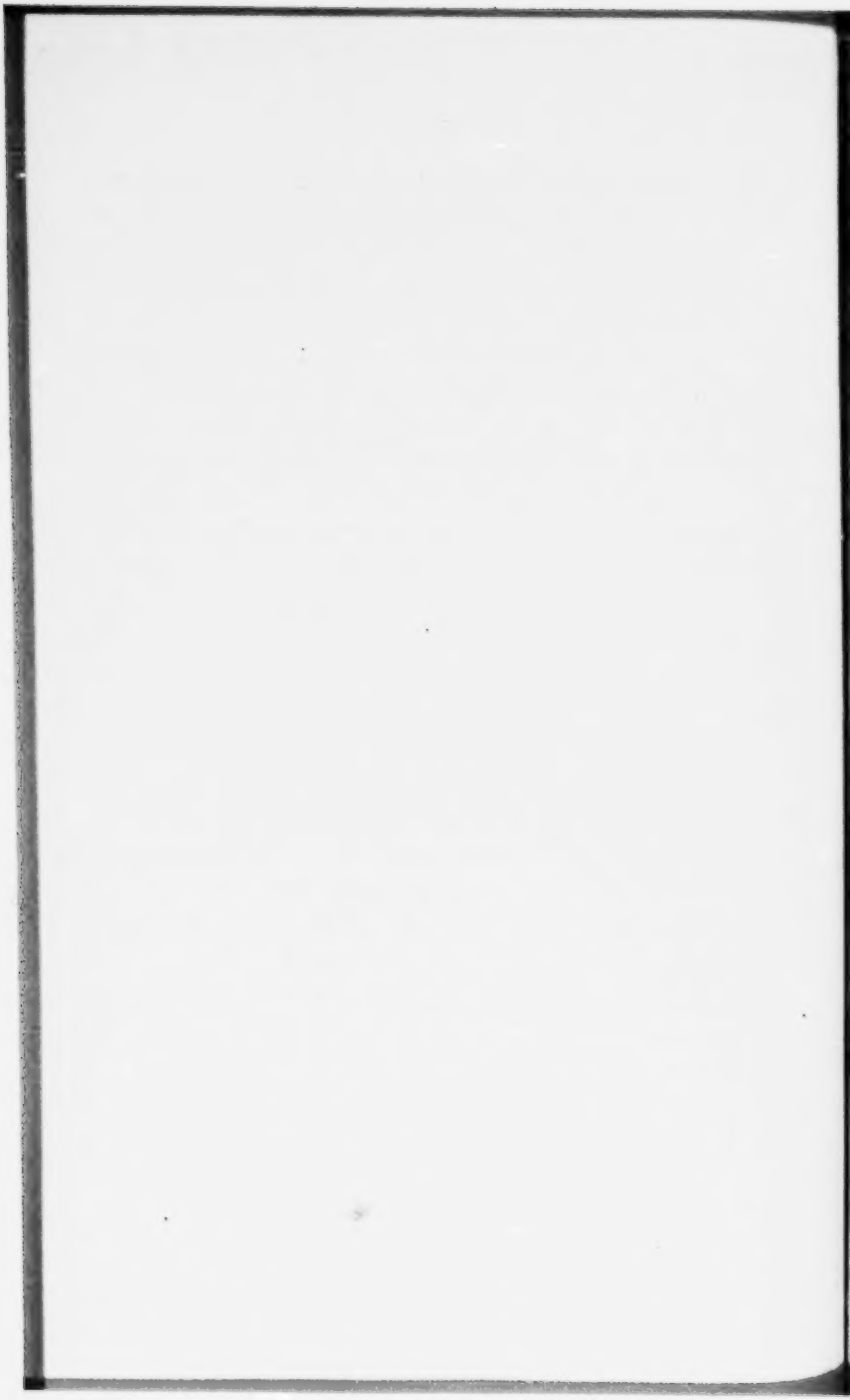
1917 and 1918. (Record, pages 331 and 334). By reason of the vast demand for gas for industrial consumption, which occurred as a result of the war, and which drew upon the lines of the gas companies during the summer as heavily as, or more heavily than during the winter, the gas companies had no opportunity to rest their wells or to accumulate a surplus of gas, as they had been in the habit of doing, in accord with good practice, under normal conditions. The federal government, through the fuel administration, gave orders to the gas companies to supply essential industrial plants with all the gas possible. Wells were drilled and turned into lines which, under normal conditions, would have been held in reserve, to assure a future supply. (Record, pages 333, 334). The supply of gas has never been adequate for all purposes, during the periods of maximum demand, since that time.

The relation of the gas producing companies to the land from which the gas is produced, and the method of establishing that relation, is usually, substantially, as follows: The gas company determines that certain land is worthy of consideration as possible gas producing land. Men from the leasing department of the company are sent to the owners of the land to secure, if possible, leases upon these lands, granting to the gas company the right to enter upon the land and drill a well for oil or gas, and reduce the same to possession, if discovered. The consideration for this lease is usually the payment of a certain sum, ordinarily one dollar per acre per year from a date designated in the lease, until such time as a well is

completed upon the lands. If a well producing either oil or gas is found upon the lands, then the payment of said amount ceases, and the gas company pays a royalty upon the production from the premises instead. This royalty is generally one-eighth of the oil produced, or a given amount, usually two or three hundred dollars per year, for a producing gas well. It is sound business policy, of course, for a company which is about to hazard its money in the drilling of a well, to secure leases upon a considerable amount of contiguous territory, so that a well, if found, would be protected from drainage, by a competitor, through other lands not within the control of the company. (Record, p. 23, Quay.)

The amount of money spent by the producing gas companies annually, in payment of bonuses at the time when these leases are originally secured, and in payment of rentals during the time when the leases are held for the purpose of protecting wells and providing a sufficient reserve acreage for the future production of the company, and in payment of the expense of drilling wells to test this territory, is a vast amount for each of the larger companies, amounting to many millions of dollars. (Quay, 24,25). If gas is discovered upon leased lands, then it becomes necessary to secure rights of way across the lands intervening between the well and the point at which the gas will be consumed. This is ordinarily done by agreement with the owners of that land upon the payment of an agreed sum. (Quay, 24).

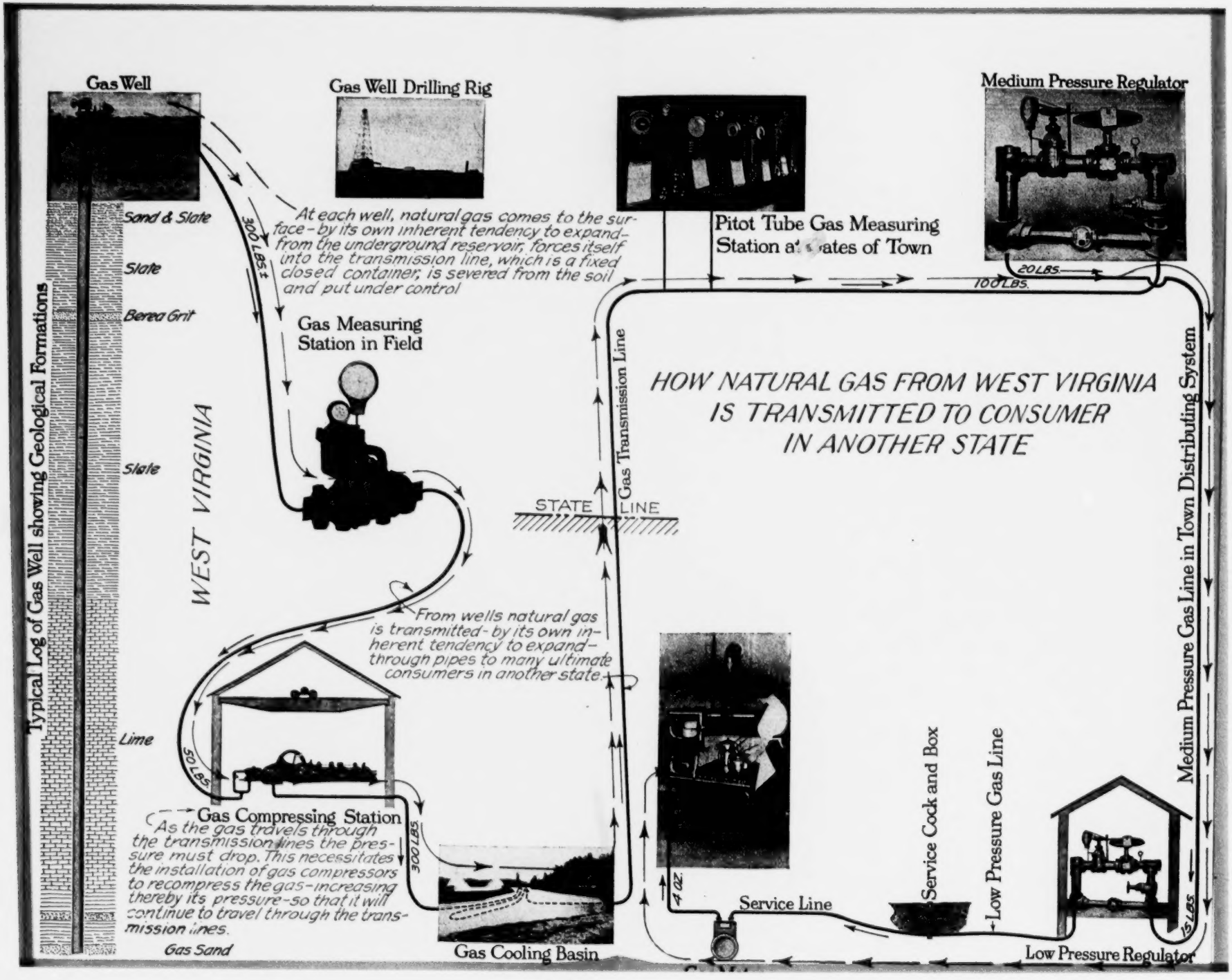
A diagram illustrating all of the typical processes of gas production, transportation, distribution and consumption was introduced in evidence by the witness Wyer, page 871 of the printed record as Pennsylvania Exhibit 37. (Record, p. 1579). We insert a copy of that exhibit herein, to avoid an extended discussion of this process.



PENNSYLVANIA EXHIBIT 37.

Offered at p. 871 of Printed Record by Witness Wyer.

How Natural Gas from West Virginia is Transmitted to the Consumer in Another State.


HOW NATURAL GAS FROM WEST VIRGINIA IS TRANSMITTED TO CONSUMER IN ANOTHER STATE
Gas Well
Gas Well Drilling Rig
Medium Pressure Regulator
Pitot Tube Gas Measuring Station at Gates of Town
At each well, natural gas comes to the surface - by its own inherent tendency to expand - from the underground reservoir, forces itself into the transmission line, which is a fixed closed container, is severed from the soil and put under control
300 LBS.
20 LBS.
100 LBS.
Gas Measuring Station in Field
Gas Transmission Line
STATE LINE
WEST VIRGINIA
From wells natural gas is transmitted - by its own inherent tendency to expand - through pipes to many ultimate consumers in another state.
Medium Pressure Gas Line in Town Distributing System
Typical Log of Gas Well showing Geological Formations
Sand & Slate
Slate
Berea Grit
Slate
Lime
Gas Sand
300 LBS.
Gas Compressing Station
As the gas travels through the transmission lines the pressure must drop. This necessitates the installation of gas compressors to recompress the gas - increasing thereby its pressure - so that it will continue to travel through the transmission lines.
300 LBS.
Gas Cooling Basin
4 OZ.
Service Line
Service Cock and Box
Low Pressure Gas Line
15 LBS.
Low Pressure Regulator

It is not feasible commercially to store natural gas in tanks or holders, but it must be transmitted to the points of consumption where the consumers use it and be held back in the wells during the warm weather when there is a less demand for it. (Sullivan, 202).

A NATURAL GAS PLANT IS DESIGNED AND BUILT FOR SPECIFIC PURPOSE.

Sullivan (The Hope Natural Gas Company), Record, pp. 204 and 214:

> "Every natural gas plant is designed and built for some specific purpose, with a view to taking gas from some certain field, transporting it and delivering it to some certain market; and the installation of the compressing stations, the size of the lines, the size of the compressing stations, their location—all of those things are carefully studied out and planned before the plant is built. The compressing stations are installed where it may be considered is the most favorable location to take the gas from certain territory—or from wells located in certain territory, and deliver it into the lines leading to the market. This is all definitely planned and fixed with most every gas company when the project of installing it is being considered and thought out. It is built for a certain specific purpose. Of course, later on, depending on conditions, additions and changes may be made from the original plan, but it is originally planned for a certain definite purpose."

CASE INVOLVES FOUR INTER-STATE OPERATING SYSTEMS.

The record discloses that there are four large and distinct gas producing, transporting and distributing systems in this case. The names of the principal separate companies composing each system are as follows:

1. The Manufacturers Light and Heat Company, located in the northern part of West Virginia, the southeastern part of Ohio and the southwestern part of Pennsylvania.

2. West of the first mentioned system is that composed of The Hope Natural Gas Company and The East Ohio Gas Company. The River Gas Company, an interstate company, is a part of this system.

3. West of the second mentioned system is that composed of The Reserve Gas Company, The Connecting Gas Company, The Union Natural Gas Corporation and The Northwestern Ohio Natural Gas Company.

4. West of the third mentioned system is that composed of The United Fuel Gas Company, operating in the middle and western part of West Virginia, eastern Kentucky and southern Ohio. The Ohio Fuel Supply Company, The Columbia Gas and Electric Company and The Union Gas and Electric Company. The Point Pleasant Gas Company, an interstate company, owned by The Ohio Fuel Supply Company, is also part of this system.

A brief description of the above mentioned companies, with copies of exhibit maps, showing their position and function in each of said four systems, is as follows:

THE MANUFACTURERS LIGHT & HEAT COMPANY

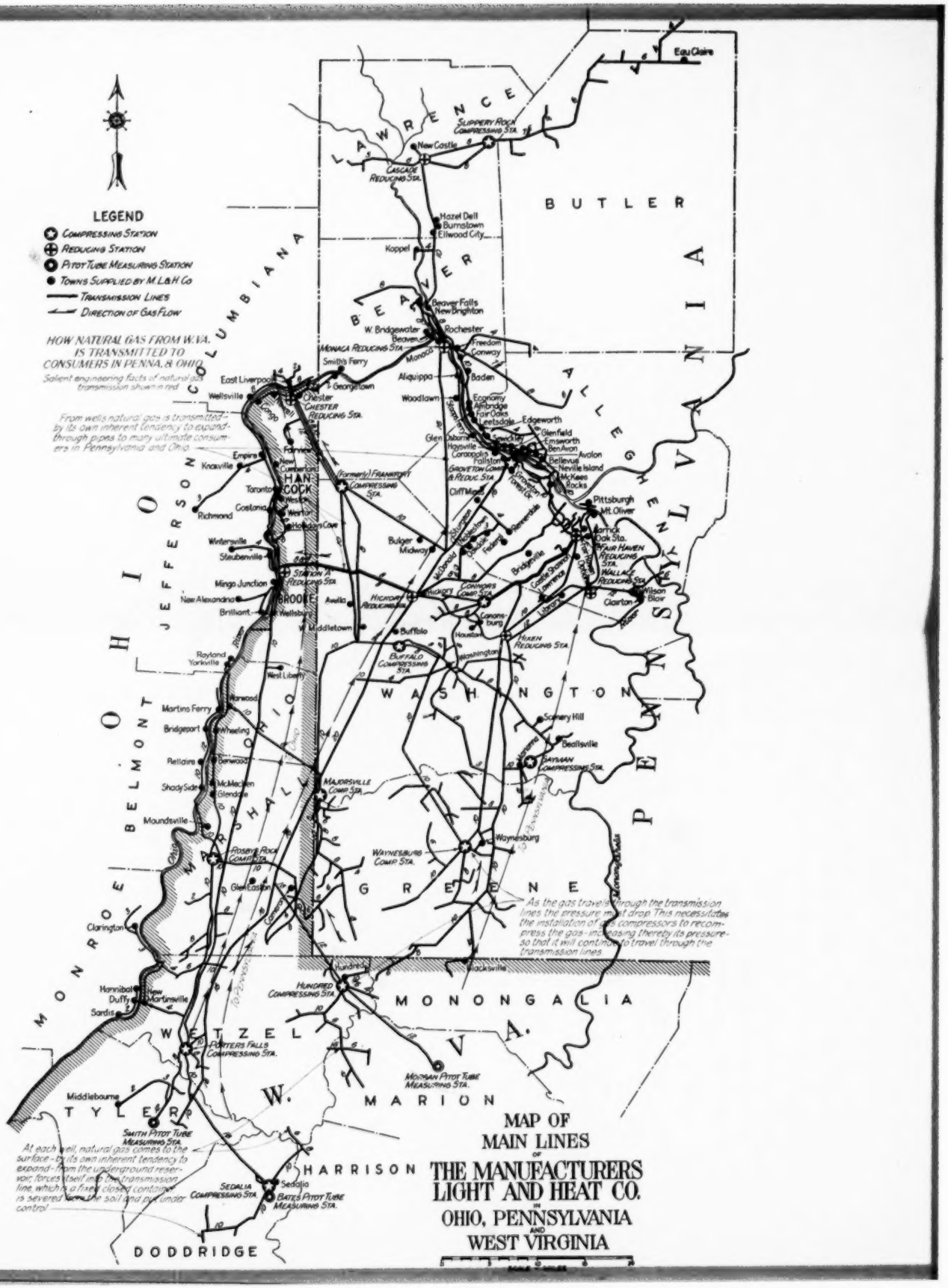
The Manufacturers Light & Heat Company has a system of gas pipe lines covering the western portion of the State of Pennsylvania and northern portion of the State of West Virginia, and a number of towns along the eastern boundary of the State of Ohio. A detailed statement of the affairs of this company is given in the testimony of Mr. Quay, the general manager of the company. His testimony appears in the record, beginning on page 4. This company has under lease in West Virginia approximately 170,000 acres, in Pennsylvania approximately 180,000 acres, and in Ohio approximately 15,000 acres. (Record, page 5). It has 457 gas wells in West Virginia, 700 in Pennsylvania and 10 in Ohio (Record, page 6). It produced in the State of West Virginia in the year 1919 approximately 5,700,000,000 cubic feet of gas, in Pennsylvania approximately 6,500,000,000 cubic feet, and in Ohio approximately 300,000,000 cubic feet. It purchased in the State of West Virginia, in the year 1919, approximately 13,500,000,000 cubic feet of gas, in Pennsylvania approximately 900,000,000 cubic feet, in Ohio approximately 100,000,000 cubic feet. The major portion of the gas purchased by this company was secured from The Hope Natural Gas Company, a large producer in the State of West Virginia, which company is hereinafter discussed in detail. (Record, p. 7).

This company has in West Virginia approximately 11,000 consumers, in Pennsylvania approximately 75,000 and in Ohio approximately 26,000. A map showing the lines of this company was introduced in evidence, at page 876 of the record, by the witness Wyer, being Pennsylvania Exhibit 39e, appearing in the record at page 1585, is here inserted.

PENNSYLVANIA EXHIBIT 39 E.

Offered at p. 876 of Printed Record by Witness Wyer.

Manufacturers Light & Heat Company Map.


LEGEND
COMPRESSING STATION
REDUCING STATION
PITOT TUBE MEASURING STATION
TOWNS SUPPLIED BY M.L.&H. CO.
TRANSMISSION LINES
DIRECTION OF GAS FLOW
HOW NATURAL GAS FROM W.VA. IS TRANSMITTED TO CONSUMERS IN PENNA. & OHIO
Salient engineering facts of natural gas transmission shown in red
From wells natural gas is transmitted by its own inherent tendency to expand through pipes to many ultimate consumers in Pennsylvania and Ohio
At each well, natural gas comes to the surface - it's own inherent tendency to expand - from the underground reservoir, forces itself into the transmission line, which is a fixed closed container is severed from the soil and put under control
As the gas travels through the transmission lines the pressure must drop. This necessitates the installation of the compressors to recompress the gas - increasing thereby its pressure - so that it will continue to travel through the transmission lines
LAWRENCE
BUTLER
BEAVER
ALLEGHENY
COLUMBIANA
JEFFERSON
HANCOCK
BROOKE
OHIO
BELMONT
MONROE
MARSHALL
WASHINGTON
GREENE
MONONGALIA
WETZEL
W. VA.
MARION
TYLER
HARRISON
DODDRIDGE
PENNSYLVANIA
Erie
Slippery Rock Compressing Sta.
New Castle
Cascade Reducing Sta.
Hazel Dell
Burnstown
Ellwood City
Koppel
Beaver Falls
New Brighton
W. Bridgewater
Rochester
Beaver
Monaca Reducing Sta.
Monaca
Freedom
Conway
Smith's Ferry
Aliquippa
Baden
East Liverpool
Wellsville
St. George Town
Chester Reducing Sta.
Woodlawn
Economy
Ambridge
Fair Oaks
Leetsdale
Edgeworth
Glenfield
Emsworth
Ben Avon
Avalon
Bellevue
Neville Island
McKees Rocks
Pittsburgh
Mt. Oliver
Empire
Knoxville
New Cumberland
Toronto
Weirton
Follansbee
Cove
Richmond
Costonia
(Formerly) Frankfort Compressing Sta.
Cliff Mine
Groveton Comp. & Reduc. Sta.
Groveton Forest Co.
Mifflin
Bulger
Midway
Bridgeville
Mattick Oak Sta.
Fair Haven Reducing Sta.
Wallace Reducing Sta.
Wilson Blow
Clairton
Steubenville
Mingo Junction
Station A Reducing Sta.
New Alexandria
Brilliant
Wellsburg
Avella
Hickory Reducing Sta.
Hickory Comp. Sta.
Cannonsburg
Houston
Buffalo
Buffalo Compressing Sta.
Hixen Reducing Sta.
Washington
Scenery Hill
Beallsville
Rayland
Yorkville
West Liberty
Martins Ferry
Warwood
Wheeling
Bridgeport
Bayman Compressing Sta.
Bellaire
Benwood
Shadyside
McMechen
Glendale
Majorsville Comp. Sta.
Moundsville
Waynesburg
Rosbys Rock Comp. Sta.
Waynesburg Comp. Sta.
Glen Easton
Clarington
Hundred
Blacksville
Hundred Compressing Sta.
Hannibal
Duffy
New Martinsville
Sardis
Porters Falls Compressing Sta.
Mobman Pitot Tube Measuring Sta.
Middlebourne
Smith Pitot Tube Measuring Sta.
Sedalia Compressing Sta.
Sedalia
Bates Pitot Tube Measuring Sta.
MAP OF MAIN LINES OF THE MANUFACTURERS LIGHT AND HEAT CO. IN OHIO, PENNSYLVANIA AND WEST VIRGINIA

This map shows very frequent crossings and re-crossings of the state lines between West Virginia and Pennsylvania, and West Virginia and Ohio. It shows that the lines were constructed in complete disregard of state lines, and solely with reference to the convenience of the company and of the communities which it had an opportunity to supply with gas.

The portion of the testimony of witness Quay upon this point is here inserted:

> "The gas passes from the State of West Virginia into the State of Pennsylvania, passes from the State of Pennsylvania back into West Virginia, passes from the State of West Virginia into Ohio, and passes from the State of Ohio back into West Virginia." (Record, page 18).
>
> "I believe that there are forty-three different points at which our lines cross from West Virginia into Ohio, from West Virginia into Pennsylvania, and vice versa." (Record, page 27).

The largest towns in the so-called Panhandle District of West Virginia, namely, Chester, New Cumberland, Weirton, Holliday's Cove, Follansbee and Wellsburg, are many times supplied entirely with gas coming from Pennsylvania or Ohio. (Rec., p. 53.)

The lines of this system constitute

> "one huge net work spreading over parts of three states—Ohio, Pennsylvania and West Virginia." (Record, Wyer, p. 887).

THE HOPE NATURAL GAS COMPANY.

The Hope Natural Gas Company was formed in 1898 to take over the gas wells and gas territory of the South Penn Oil Company. (Corrin, p. 332). It was the West Virginia end of a pipe line system all built at one time and for one purpose, the Ohio end being built by The East Ohio Gas Company to supply Canton, Massillon, Akron and other towns in Ohio. The lines of the Hope Company as they exist at the present time are shown by Pennsylvania Exhibit 39b, offered at page 876 of the printed record by witness Wyer, and appearing at page 1582 of the printed record, a copy of which exhibit we here insert.

PENNSYLVANIA EXHIBIT 39 B.

Offered at p. 876 of Printed Record by Witness Wyer.

Hope Natural Gas Company Map.

This also shows River Gas Co., along Ohio river as described at p. 318-319 of Printed Record by Witness Corrin.

MAP OF
MAIN LINES
OF
HOPE NATURAL GAS CO.
IN
WEST VIRGINIA
SCALE - MILES
LEGEND
COMPRESSING STATION
MEASURING STATION
TOWNS SUPPLIED WITH NATURAL GAS
DIRECTION GAS FLOW
HOW NATURAL GAS FROM WEST VIRGINIA IS TRANSMITTED TO CONSUMERS IN PENNSYLVANIA AND OHIO
Salient engineering facts of natural gas transmission shown in red
From wells natural gas is transmitted by its own inherent tendency to expand through pipes to many ultimate consumers in Pennsylvania and Ohio.
At each well natural gas comes to the surface - by its own inherent tendency to expand - from the underground reservoir, forces itself into the transmission line, which is a fixed closed container, is severed from the soil and put under control
As the gas travels through the transmission lines the pressure must drop. This necessitates the installation of gas compressors to recompress the gas - increasing thereby its pressure - so that it will continue to travel through the transmission lines
Collier
BROOKE
OHIO
PENNA.
MARSHALL
Clarington
Littleton
Glover Meas. Sta.
Wileyville
Paden City
Sistersville
To Matamoras, Ohio
To New Matamoras, O.
Friendly
Ohio River
WETZEL
MONONGALIA
Fairview
Hastings Comp. Sta.
Southfield
Smith Meas. Sta.
Centerville Comp. Sta.
Lima
TYLER
MARION
Williamstown
Belmont
Eureka
St. Marys
To Marietta, O.
To Field in Ohio
PLEASANTS
Schultz Comp. Sta.
Deep Valley Comp. Sta.
Schutte Comp. Sta.
Bates Meas. Sta.
Wallace Comp. Sta.
Fora Comp. Sta.
Sardis Comp. Sta.
Bridgeport Comp. Sta.
HARRISON
TAYLOR
WOOD
Ellenboro Comp. Sta.
Harrisville Comp. Sta.
Smithburg Comp. Sta.
Bristol Comp. Sta.
Wolf Summit Comp. Sta.
Goff Comp. Sta.
Quiet Dell
Norwood Comp. Sta.
West Fork Comp. Sta.
Mt. Clare
Milford Comp. Sta.
DODDRIDGE
Zinnia Comp. Sta.
RITCHIE
WEST VIRGINIA
Cold Water Comp. Sta.
Lightburn Comp. Sta.
Marts Comp. Sta.
Lost Creek
Davis Comp. Sta.
Johnstown
BARBOUR
Craig Comp. Sta.
Fink Comp. Sta.
WIRT
Big Spring Comp. Sta.
Cabot Comp. Sta.
Russet Comp. Sta.
Cove Light Comp. Sta.
Weston Comp. Sta.
Gaston
LEWIS
GILMER
CALHOUN
Roanoke
Orlando
Hoover Comp. Sta.
Cedarville Meas. Sta.
Wolfe Summit Comp. Sta.
Wolfersville
Ireland
Adnah
Gould
French Creek
Frenchton
Rock Cove
UPSHUR
BRAXTON
Minnora
Brave Comp. Sta.
Pennsylvania
West Virginia
Finley Comp. Sta.
State Line
Hawkins Comp. Sta.
Morgan Meas. Sta.
Gallagher Comp. Sta.
Wright Comp. Sta.
Producers Plant
Seven Pines Comp. Sta.
Kings Comp. Sta.
Metz
Glover Gap
Dunkard Creek
Pine Grove
To Ohio
To Penna.
To Marion Co.
To Harrison Co.
To Monongalia Co.
To Taylor Co.
To Barbour Co.
To Upshur Co.
To Lewis Co.
To Braxton Co.
To Gilmer Co.
To Calhoun Co.
To Wirt Co.
To Ritchie Co.
To Doddridge Co.
To Wetzel Co.
To Tyler Co.
To Pleasants Co.
To Wood Co.
To Ohio River
Ohio River Gas Co.
Equitable Gas Co.
Hope Nat. Gas Co.
Penna. Gas Co.

This map shows pipe lines of various dimensions, from two inches in diameter to twenty inches in diameter, extending over numerous counties in West Virginia. It shows also numerous compressing stations in which the pressure necessary to cause the gas to flow in the desired direction is restored to the gas. This map shows along the northern and western boundaries of the State of West Virginia points at which the gas is delivered out of the lines of the Hope Company to consumers and other companies in Pennsylvania and Ohio. At Clarington, West Virginia, three lines of the Hope Company, being 20, 20 and 18 inches in diameter, respectively, are shown, which deliver gas from the Hastings compressor station to The East Ohio Gas Company lines, which transport the same into the State of Ohio. A similar situation is shown farther north and east along the river, where, at a point called Round Bottom, two other lines, 10 and 18 inches in diameter, respectively, deliver gas from the Hastings compressor station to The East Ohio Gas Company for transportation into Ohio. Along the southern boundary of Pennsylvania and the northern boundary of West Virginia, other points are shown at which the Hope Company delivers gas to other companies for consumption in the State of Pennsylvania.

The largest sales of gas made by the Hope Company for consumption in the State of Ohio are made to The East Ohio Gas Company. The contract under which these sales are made at present is Pennsylvania Exhibit No. 19, offered by witness Sullivan at page 225 of the

printed record, and reproduced in full at page 1544 of the printed record. It supersedes the oral contract made in the formation of both companies in 1898 and recites in substance that the Hope Company is the owner of gas wells, gas rights and leases for gas purposes in the State of West Virginia, and is the owner of pipe lines extending from its natural gas territory in the State of West Virginia to boundary of the State of Ohio on the Ohio river, and that The East Ohio Gas Company holds franchises and distributing systems for the distribution of natural gas in the city of Cleveland and other cities, villages and towns in the State of Ohio, and is the owner of three trunk lines extending from the boundary of the State of Ohio on the Ohio river through the State of Ohio to the city of Cleveland and connecting with distributing systems owned by the said Ohio company in the city of Cleveland and in various cities, villages and towns in the State of Ohio. It further shows the undertaking and agreement of the Hope Company to sell and deliver to The East Ohio Company and of the East Ohio Company to purchase and take from the Hope Company, all the natural gas requisite for the supply of the domestic consumers of The East Ohio Gas Company, and also certain amounts of gas to be supplied upon special terms and with the consent of the Hope Company for manufacturing purposes. The contract regulates the pressure at which the gas is to be delivered and recites in the seventh division thereof, at page 1546 of the record, that the contract shall continue unless previously terminated by mutual consent of the parties so long as the Hope Company produces gas in

marketable quantities in West Virginia. **The seventh division of the contract further provides for preferential service for the domestic consumers on the lines of the Hope Company in West Virginia, and for the pro rating of all of the rest of the supply of gas of the Hope Company between the domestic consumers of The East Ohio Company and those of the Peoples Natural Gas Company.** The contract contains many provisions covering the details of so large and important a transaction, but none of which, we believe, is material in this litigation.

THE RIVER GAS COMPANY.

The River Gas Company obtains its gas supply for distribution from West Virginia. It supplies towns in both Ohio and West Virginia, namely, Marietta, Matamoras, Newport, Belpre, Stockport, Chester Hill, Amesville, Painesville, Gravel Bank, Reno and Fly.

> "Part of the Hope's allotment of gas going through the lines of The Connecting Gas Company was taken by The Hope Natural Gas Company and sold to the River Company." (Record, page 321).

At times the gas from its lines in Ohio passes back into West Virginia through the lines of The Hope Natural Gas Company. The testimony of the witness Corrin upon this point appears at page 205 of the record:

> "It is true that gas at times goes from the lines of the River Gas Company back into the State of West Virginia through the lines of the Hope Company. I know this, because there is a meter on the lines and we pay the River Gas Company for the gas that goes through."

The map of the lines of the Hope Company, Pennsylvania Exhibit 39b, which we have hereinbefore inserted at page —— in this brief, shows also the lines of The River Gas Company.

THE EAST OHIO GAS COMPANY.

The East Ohio Gas Company, the company entitled to receive the gas from the Hope Company under the contract herein last discussed, has an extensive system of gas transmission and distribution lines in the State of Ohio, which supply gas to many cities, among them Youngstown, Alliance, Canton, Massillon, Akron and Cleveland. It owns and operates five large pipe lines, being 20, 18, 18, 10 and 18 inches in diameter, respectively, the longest of which is 134 miles in length, and the shortest of which is 100 miles in length, which transport gas, three from Clarington and two from Round Bottom on the Ohio river, at which points the gas is received from The Hope Company, to the cities hereinbefore named and numerous other municipalities in Ohio. (Record, 565, 567, 582; Pennsylvania Exhibit 47, record 1599). The first of these lines was laid from Round Bottom on the Ohio River to the city of Akron, Ohio, in the year 1898. (Record, 590). All of its main lines, their dimensions and directions and communities supplied by them are shown upon a map, which was offered in evidence at page 973 of the record, by the witness Wyer, as Pennsylvania Exhibit 47, and which appears at page 1599 of the record, a copy of which map we here insert.

PENNSYLVANIA EXHIBIT 47.

Offered at p. 973 of Printed Record by Witness Wyer.

Map of the Main Lines of the East Ohio Gas Company.

MAP OF MAIN LINES OF EAST OHIO GAS CO.

SCALE – MILES

0 5 10 15 20

LEGEND

- Cities & Towns Served by E.O.G. Co.
- Cities & Towns Gas Furnished by E.O.G Co To Distributing Companies
- Trunk Line Valve Stations
- Gas Compressing Stations

The testimony of the witness Daly, at page 582 of the printed record, shows conclusively how The East Ohio Gas Company and The Hope Natural Gas Company are dependent upon each other for their supply of gas and market, respectively. We quote here a part of Mr. Daly's testimony:

> "Q. You may state whether or not it is a fact that when The East Ohio Gas Company would construct its lines 1, 2, 3, 4 and 5 from the river northwardly, as you have described, The Hope Natural Gas Company, on the West Virginia side of the river, would construct a line or lines from its system, perhaps Hastings Station, northwardly to the river, and connect with your lines, having with your company a unity of purpose of transporting West Virginia gas into Ohio for distribution to your consumers."

p. 538:

> "A. The investment in each instance was made after the East Ohio Company had received the assurance of The Hope Natural Gas Company that it had an adequate supply of gas and would lay additional transportation lines of sufficient size to transport the quantity of gas desired, up to the full capacity of the pipe lines that the East Ohio Company constructed."

The testimony of Mr. Daly at page 570, with reference to the source of supply of the gas distributed by The East Ohio Gas Company here follows:

> "A. No, it had no territory in the State of Ohio. The East Ohio Gas Company had no territory in the State of Ohio until after 1903.
>
> "Q. Prior to 1903, where did it procure its gas?
>
> "A. Purchased it under contract from The Hope Natural Gas Company. That contract was entered into prior to the construction of the No. 1 ten-inch line running from Pipe Creek to Akron.

"Q. Then since the inception of The East Ohio Gas Company in 1898, it has been procuring gas delivered to it from West Virginia by The Hope Natural Gas Company?

"A. Yes, sir; it didn't start any development for itself until 1906 or 1907."

Page 569:

"Q. What are the sources of your gas supply?

"A. We purchase nearly all of our gas— approximately 80 per cent. of it—from The Hope Natural Gas Company."

"The Hope Natural Gas Company was organized for the purpose of supplying The East Ohio Gas Company with gas."—Tonkin, p. 425.

The amounts of gas produced in West Virginia and purchased by The East Ohio Gas Company for the purpose of supplying Ohio communities, and the extent to which those Ohio communities are dependent upon the West Virginia gas for their supply, are shown by the testimony of Martin B. Daly, beginning record, page 563, and the figures especially appear at pages 569 and 570. They show that in 1918 the East Ohio Company purchased from the Hope Company 36,069,354,000 feet; produced in Ohio 8,317,075,000 feet; purchased in Ohio 4,290,920,000 feet of gas. The testimony of the same witness at page 573 shows the towns served by this company as of December 31st, 1919, and the number of consumers in each town. Thirty-four principal towns are shown to be served, the largest being Cleveland, having 208,294 consumers, and the smallest New Middletown, with 65 consumers. On pages 575 and 576 appears a

table prepared by the same witness showing the meter connections for the United States government, the state, subdivisions of the state, such as municipalities, counties and school boards, and churches, parsonages, and charitable institutions. The tables appearing at page 580 of the record, prepared by the witness Daly, show that substantially all of the gas distributed by The East Ohio Gas Company is distributed to domestic consumers. This company is active in its efforts to procure additional gas territory and to increase the production from territory already acquired. (Record, page 585).

THE RESERVE GAS COMPANY.

A map of the main lines of The Reserve Gas Company in West Virginia, offered at page 877 of the printed record by witness Wyer as Penn. Exhibit 39c, and appearing in the record at page 1583, is here inserted.

PENNSYLVANIA EXHIBIT 39 C.

Offered at p. 876 of Printed Record by Witness Wyer.

Reserve Natural Gas Company Map.

HOW NATURAL GAS FROM WEST VIRGINIA IS TRANSMITTED TO CONSUMERS IN OHIO & INDIANA
Salient engineering facts of natural gas transmission shown in red
LEGEND
Compressing Station
Measuring Station
Direction of Gas Flow
PENNSYLVANIA
WEST VIRGINIA
STATE LINE
Note:
The towns of Camden and Wilsonburg are supplied by Reserve Gas Company
OHIO
Ohio River
TYLER
To Connecting Gas Co. Lines
PLEASANTS
As the gas travels through the transmission lines the pressure must drop. This necessitates the installation of gas compressors to recompress the gas - increasing thereby its pressure so that it will continue to travel through the transmission lines.
To Ohio & Indiana
WOOD
DODDRIDGE
HARRISON
WEST VIRGINIA
Wilsonburg
Wilsonburg Compressing Sta.
Corrin Compressing Sta.
RITCHIE
From wells natural gas is transmitted - by its own inherent tendency to expand - through pipes to many ultimate consumers in Ohio and Indiana
Dry Fork
Kennedy Compressing Sta.
Camden Compressing Sta.
Camden
GILMER
LEWIS
At each well, natural gas comes to the surface - by its own inherent tendency to expand - from the underground reservoir, forces itself into the transmission line, which is a fixed closed container, is severed from the soil and put under control
MAP OF
MAIN LINES
OF
RESERVE GAS COMPANY
IN
WEST VIRGINIA
SCALE OF MILES

This map shows that practically all of the production of this company is in the counties of Harrison and Lewis in West Virginia, and that the gas is there compressed and sent through three large lines, being 12, 12 and 16 inches in diameter, which are, before reaching the river, reduced to two 16-inch lines, to a point on the Ohio river where the gas is delivered to The Connecting Gas Company. Detailed information with reference to the operations of The Reserve Gas Company is given by the witness Corrin, the manager of the company, at page 317ff of the record. This company had, in January, 1920, approximately 750 wells and approximately 56,000 acres of territory, and approximately 525 miles of pipe line. (Record, 317). The lines of the company extend to the state line between the states of West Virginia and Ohio at Boaz, south of Marietta, Ohio. The Reserve Company, during the year 1919, produced 20,911,000,000 feet of gas and purchased during the same period 1,267,000,000. (Record, pp. 319, 320).

The gas which it delivers at Boaz, Ohio, is there received by The Connecting Gas Company, which is merely a transporting company, transporting gas produced by The Reserve Gas Company from the state line between Ohio and West Virginia to a point in Ohio called Sugar Grove, through two 16-inch pipe lines, approximately 60 miles long. This gas, transported to Sugar Grove, Ohio, is there apportioned between two companies, one being The Union Natural Gas Corporation, which through its subsidiary companies supplies many municipalities in the central and northern part of Ohio with gas. (Record, p. 321).

The other line of the Connecting Company carries gas from the West Virginia line to Wheeler Station at Sugar Grove, Ohio, where it is delivered to The Northwestern Ohio Natural Gas Company for transportation to Toledo and other cities in northwestern Ohio. (Rec., 323).

The contract between The Reserve Natural Gas Company, The Union Natural Gas Company, The Hope Natural Gas Company, The Connecting Gas Company and T. N. Barnsdall, dated April 11th, 1913, offered in the printed record at page 225 by the witness Sullivan and appearing in the printed record at page 1535 as Pennsylvania Exhibit No. 18, supercedes prior contracts made at the time of the building of the plants in 1902. This contract on its face shows that it was made for the purpose of purchasing gas from the Reserve Company and having it transported to various points in Ohio for the purpose of supplying gas to The Union Natural Gas Corporation for the communities in Ohio which it serves and of supplying gas to The Northwestern Ohio Natural Gas Company with gas for Toledo and other Ohio communities. **As in all other contracts made and in evidence in this case pursuant to which gas is produced in West Virginia and transported to consumers in Ohio communities, provision is made for preferential service for the domestic consumers of the respective producing companies in West Virginia.** The contract is long and detailed, but we believe that the statements here made concerning it show all of it that is material to this litigation.

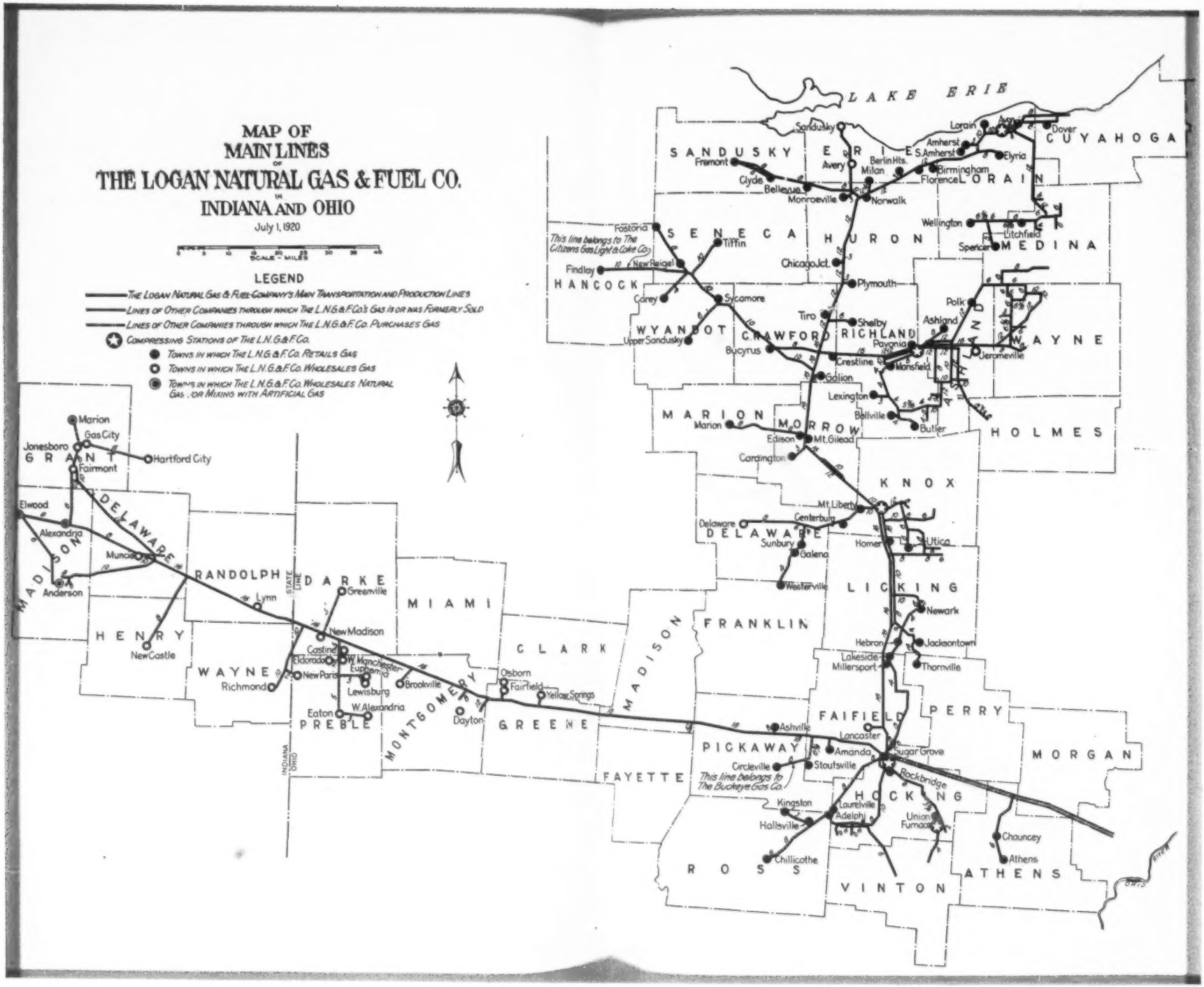
THE UNION NATURAL GAS CORPORATION.

The Union Natural Gas Corporation was organized under the laws of the State of Delaware in 1902, and proceeded forthwith in the same year to acquire 50 per cent., less one share, of the capital stock of The Reserve Gas Company, a West Virginia corporation, and of The Connecting Gas Company, an Ohio corporation, together with T. N. Barnsdall's interests and right to a certain contract executed in 1902 between himself, The Hope Natural Gas Company and The Reserve Natural Gas Company. (Record, p. 748). The Union Natural Gas Corporation, which receives gas from The Reserve Gas Company through the lines of The Connecting Gas Company at Sugar Grove, Fairfield county, Ohio, owns and holds the stock of thirteen distributing companies in the State of Ohio. (Record, pages 748-749.) The largest of these is The Logan Natural Gas and Fuel Company, acquired in 1902, which owns all leases, gas wells, does all the developing and owns all the pipe lines or transmission lines, with two unimportant exceptions, that are identified with and used in connection with the supplying of gas to said distributing companies. (Record, pages 749 and 771). A map designated by the witness Whitcomb as a "Field and Main Line Map" of the subsidiary companies of The Union Natural Gas Corporation in Ohio and Indiana was offered at page 750 of the printed record by the witness, as Ohio Exhibit No. 10, and appears at page 1708 of the printed record. The map is here next inserted.

OHIO EXHIBIT 10.

Offered at p. 750 of Printed Record by Witness Whitcomb.

Map of Main Lines of Logan Natural Gas & Fuel Company in Indiana and Ohio.


MAP OF
MAIN LINES
OF
THE LOGAN NATURAL GAS & FUEL CO.
IN
INDIANA AND OHIO
July 1, 1920
SCALE - MILES
LEGEND
THE LOGAN NATURAL GAS & FUEL COMPANY'S MAIN TRANSPORTATION AND PRODUCTION LINES
LINES OF OTHER COMPANIES THROUGH WHICH THE L.N.G.&F.Co.'s GAS IS OR HAS FORMERLY SOLD
LINES OF OTHER COMPANIES THROUGH WHICH THE L.N.G.&F. Co. PURCHASES GAS
COMPRESSING STATIONS OF THE L.N.G.&F.Co.
TOWNS IN WHICH THE L.N.G.&F. Co. RETAILS GAS
TOWNS IN WHICH THE L.N.G.&F.Co. WHOLESALES GAS
TOWNS IN WHICH THE L.N.G.&F.Co. WHOLESALES NATURAL GAS FOR MIXING WITH ARTIFICIAL GAS
LAKE ERIE
Sandusky
Lorain
Akron
Dover
CUYAHOGA
SANDUSKY
ERIE
Amherst
S.Amherst
Elyria
Fremont
Avery
Berlin Hts.
Milan
Birmingham
Florence
LORAIN
Clyde
Bellevue
Monroeville
Norwalk
Wellington
Litchfield
Spencer
MEDINA
Fostoria
This line belongs to The Citizens Gas Light & Coke Co.
SENECA
HURON
Tiffin
Findlay
New Reigel
Chicago Jct.
Plymouth
HANCOCK
Carey
Sycamore
Tiro
Shelby
Ashland
Polk
WYANDOT
CRAWFORD
RICHLAND
ASHLAND
WAYNE
Upper Sandusky
Bucyrus
Paynia
Jeromeville
Crestline
Mansfield
Galion
Lexington
Bellville
Butler
MARION
MORROW
HOLMES
Marion
Edison
Mt. Gilead
Cardington
KNOX
Mt. Liberty
Centerburg
Delaware
DELAWARE
Sunbury
Galena
Homer
Utica
Westerville
LICKING
Newark
FRANKLIN
Hebron
Jacksontown
Lakeside
Millersport
Thornville
FAIFIELD
PERRY
Ashville
Lancaster
PICKAWAY
Amanda
Sugar Grove
MORGAN
Circleville
Stoutsville
Rockbridge
This line belongs to The Buckeye Gas Co.
FAYETTE
HOCKING
Kingston
Laurelville
Adelphi
Union Furnace
Hallsville
Chauncey
Athens
Chillicothe
ROSS
VINTON
ATHENS
OHIO RIVER
Marion
Gas City
Jonesboro
GRANT
Hartford City
Fairmont
Elwood
Alexandria
MADISON
DELAWARE
Muncie
Anderson
RANDOLPH
DARKE
STATE LINE
Lynn
Greenville
MIAMI
HENRY
New Madison
New Castle
Castine
Eldorado
W. Manchester
Euphemia
WAYNE
New Paris
Richmond
Lewisburg
Brookville
Osborn
Fairfield
Yellow Springs
CLARK
MADISON
MONTGOMERY
Dayton
GREENE
Eaton
W. Alexandria
PREBLE
INDIANA
OHIO

The lines of The Connecting Company also are shown on this map by the two broken parallel lines lying close together and extending from the Ohio River northwest to Sugar Grove in Fairfield county, Ohio.

This map shows that service is rendered by these numerous Ohio companies in many counties and municipalities in the northern and western parts of the State of Ohio.

The natural gas transported through The Logan Natural Gas and Fuel Company's 18-inch line westward from Sugar Grove to The Jantha Light and Heat Company in Ohio, to all Indiana consumers, and to Dayton, Ohio, comes "all from West Virginia." (Record, page 753). All contracts on the line from Sugar Grove to Dayton and Indiana contemplate and provide for the delivery of West Virginia gas only. The Sugar Grove compressing station was installed for the distribution or the compression of gas produced both in Ohio and in West Virginia; at the time of the laying of the 18-inch Sugar Grove-Dayton line, in 1913, the station was very materially increased as to capacity in order to take care of the increased volume of gas from West Virginia, to drive it on to Dayton and to points in Indiana. There is no other compressing station on that line, a distance of approximately 182 miles. (Whitcomb, p. 782).

These affiliated companies not only buy large quantities of gas from The Reserve Company, at Sugar Grove, Ohio, but also produce a considerable quantity of gas within the State of Ohio, or purchase such gas from producers. A tabulation of the cities and towns in Ohio and

Indiana served by these affiliated companies, appears on pages 758, 760 and 761 of the printed record. They show a total of more than 130,000 consumers, representing a population of more than 500,000 people. Tables on pages 761, 762 and 763 show that these companies furnish a large amount of gas to public institutions operated by the State or its subdivisions.

The testimony of the witness Whitcomb at page 773 of the record shows a delivery of more than 9,000,000,000 cubic feet of gas by the Reserve Company to the Logan Company in the year 1919, under the provisions of the contract between the Reserve Company and the Union Company and others hereinbefore discussed, being Pennsylvania Exhibit No. 18. The testimony of the witness Whitcomb at page 768 shows that all of the communities lying upon the line which appears upon the map as running from Sugar Grove, Ohio, west to Elwood, Indiana, are supplied and have a right to be supplied only with West Virginia gas, purchased from the Reserve Company through the lines of the Connecting Company at Sugar Grove, Ohio.

A summary of the investment for delivery of gas from West Virginia to Ohio and Indiana consumers shows a total of $6,521,254.08. (Record, page 786). The total number of consumers supplied with West Virginia gas by The Logan Natural Gas and Fuel Company, directly and indirectly, represents a population of 364,949, and 78,994 consumers. (Record, p. 787).

THE NORTHWESTERN OHIO NATURAL GAS COMPANY.

The Northwestern Ohio Natural Gas Company has already been discussed in connection with the discussion of The Hope Natural Gas Company and will hereinafter be referred to in connection with The Ohio Fuel Supply Company. The main or transmission lines of this company appear on the map of The Ohio Fuel Supply Company's lines. Pennsylvania Exhibit 49, record, p. 1601, which exhibit is to be evidence of that fact the same as if separately offered. (Record, p. 717). Its gas supply comes from The Hope Natural Gas Company in West Virginia, through the lines of The Connecting Gas Company, by virtue of an arrangement before mentioned with The Reserve Gas Company. (Record, p. 1509, 1535). As shown on said map, the gas is transported through two 10-inch lines from Horn's Mills, Fairfield county, Ohio, to the cities of North Baltimore, Bowling Green, Perrysburg, Maumee and Toledo, a total distance of about 160 miles. The gas distributed by this company comes exclusively from West Virginia, except for some small amounts of gas which this company procures from The Ohio Fuel Supply Company in emergency cases, where the Hope Company does not furnish a sufficient amount. (Record, pp. 718-19). This company has a production of its own from only six or seven wells.

Its consumers are all situated in the northwestern part of Ohio and are as follows:

City of Toledo	52,132
Maumee	489
North Baltimore	663
Perrysburg	595
Bowling Green	1,639

The population dependent upon this company for natural gas service is more than 250,000. (Record, p. 721). Its supply has been furnished almost exclusively for domestic use, less than 10 per cent. being furnished for industrial use. (Record, 722).

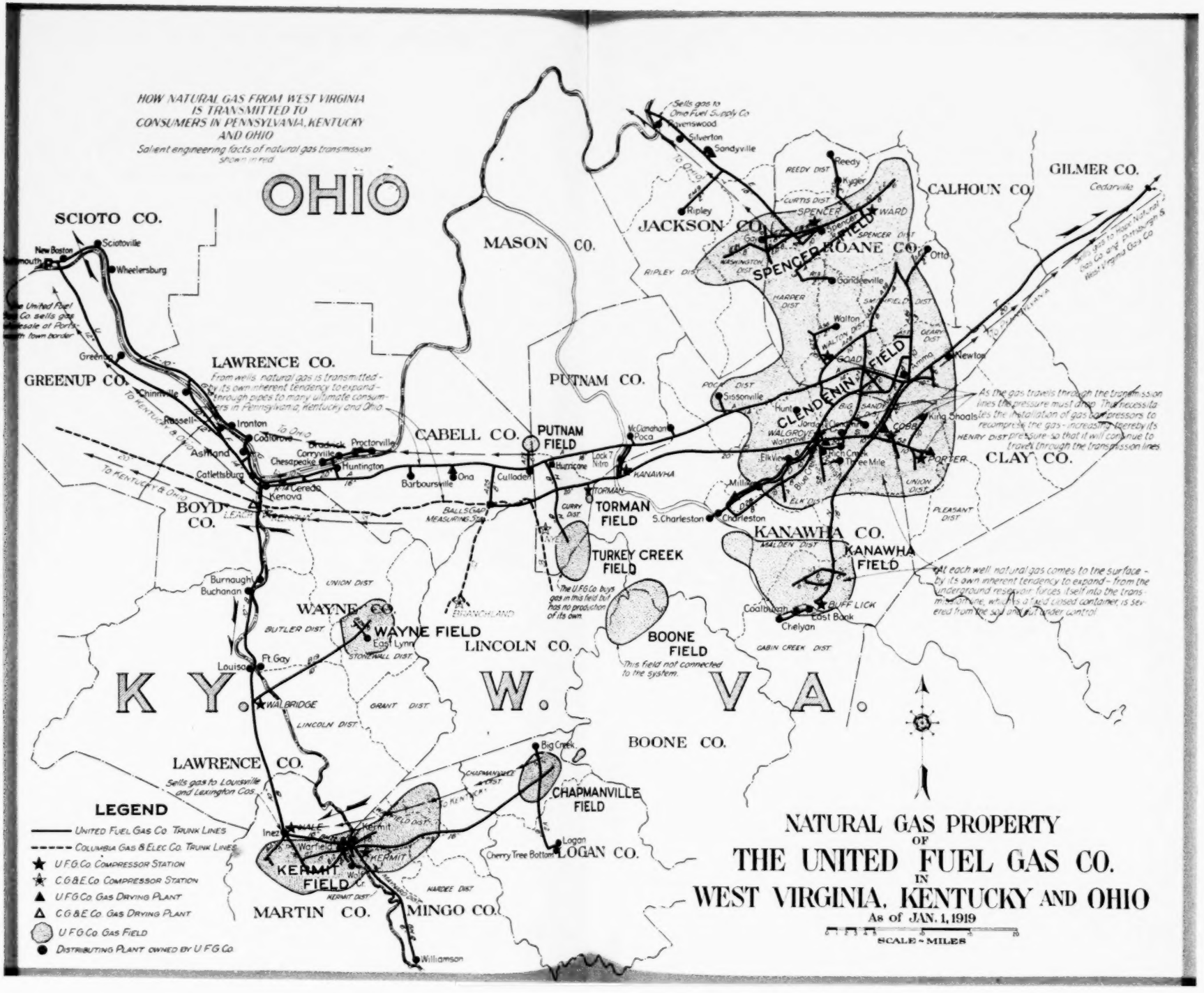
THE UNITED FUEL GAS COMPANY.

The United Fuel Gas Company, a large producer and transporter of gas in West Virginia, is shown by a map which was offered at page 876 of the printed record by the witness Wyer as Pennsylvania Exhibit 39d, which map appears at page 1584 of the printed record. A copy of said map is here inserted.

PENNSYLVANIA EXHIBIT 39 D.

Offered at p. 876 of Printed Record by Witness Wyer.

United Fuel Gas Company Map.


HOW NATURAL GAS FROM WEST VIRGINIA IS TRANSMITTED TO CONSUMERS IN PENNSYLVANIA, KENTUCKY AND OHIO
Salient engineering facts of natural gas transmission shown in red
OHIO
SCIOTO CO.
New Boston
Sciotoville
Wheelersburg
GREENUP CO.
Greenup
Chinnville
Russell
Ironton
Coalgrove
Ashland
Catlettsburg
Cereda
Kenova
BOYD CO.
LAWRENCE CO.
From wells natural gas is transmitted - by its own inherent tendency to expand - through pipes to many ultimate consumers in Pennsylvania, Kentucky and Ohio
To Kentucky & Ohio
To Ohio
MASON CO.
PUTNAM CO.
CABELL CO.
Bradrick
Proctorville
Corryville
Chesapeake
Huntington
Barboursville
Ona
Culloden
PUTNAM FIELD
McCanaham
Poca
Hurricane
Lock 7 Nitro
KANAWHA
TORMAN
CURRY DIST.
TORMAN FIELD
BALLS GAP MEASURING STA.
TURKEY CREEK FIELD
The U.F.G.Co. buys gas in this field but has no production of its own.
BRANCHLAND
WAYNE CO.
WAYNE FIELD
East Lynn
STONEWALL DIST.
BUTLER DIST.
UNION DIST.
Burnaugh
Buchanan
Louisa
Ft. Gay
LINCOLN CO.
BOONE FIELD
This field not connected to the system.
K Y. W. VA.
WALBRIDGE
GRANT DIST.
LINCOLN DIST.
BOONE CO.
LAWRENCE CO.
Sells gas to Louisville and Lexington Cos.
Big Creek
CHAPMANVILLE FIELD
CHAPMANVILLE DIST.
Logan
Cherry Tree Bottom
LOGAN CO.
KERMIT FIELD
Inez
Warfield
Kermit
HALE
KERMIT
KERMIT DIST.
NARCEE DIST.
MARTIN CO.
MINGO CO.
Williamson
LEGEND
UNITED FUEL GAS CO. TRUNK LINES
COLUMBIA GAS & ELEC. CO. TRUNK LINES
U.F.G.Co. COMPRESSOR STATION
C.G.&E.Co. COMPRESSOR STATION
U.F.G.Co. GAS DRYING PLANT
C.G.&E.Co. GAS DRYING PLANT
U.F.G.Co. GAS FIELD
DISTRIBUTING PLANT OWNED BY U.F.G.Co.
Sells gas to Ohio Fuel Supply Co
Silverton
Sandyville
Ripley
To Ohio
JACKSON CO.
Reedy
Kyger
REEDY DIST.
CURTIS DIST.
SPENCER
WARD
SPENCER FIELD
SPENCER DIST.
WASHINGTON DIST.
RIPLEY DIST.
ROANE CO.
Otto
Gandeeville
HARPER DIST.
SPRINGFIELD DIST.
Walton
WALTON DIST.
GEARY DIST.
GOAD
Emma
Newton
CLENDENIN FIELD
POCA DIST.
Sissonville
Hunt
Jordan
Clendenin
BIG SANDY
WALGROVE
Walgrove
COBB
King Shoals
HENRY DIST.
ElkView
Elk
Three Mile
PORTER
CLAY CO.
UNION DIST.
Millville
ELK DIST.
S. Charleston
Charleston
PLEASANT DIST.
KANAWHA CO.
MALDEN DIST.
KANAWHA FIELD
BUFF LICK
Coalburgh
East Bank
Chelyan
CABIN CREEK DIST.
CALHOUN CO.
GILMER CO.
Cedarville
As the gas travels through the transmission lines the pressure must drop. This necessitates the installation of gas booster pressors to recompress the gas - increasing thereby its pressure - so that it will continue to travel through the transmission lines.
At each well natural gas comes to the surface - by its own inherent tendency to expand - from the underground reservoir. Once itself into the transmission line, which is a tight closed container, is severed from the soil and out under control
NATURAL GAS PROPERTY OF THE UNITED FUEL GAS CO. IN WEST VIRGINIA, KENTUCKY AND OHIO
As of JAN. 1, 1919
SCALE - MILES

It shows that this company transports gas from its northern field in West Virginia to Ravenswood on the Ohio River, and there delivers it to The Ohio Fuel Supply Company, by which company it is transported farther into Ohio. It shows further that gas is transported from the Clendenin field to various points upon the Ohio River, crossing the river at several places, one of which is in the vicinity of Portsmouth, Ohio. It further shows that gas is transported from the Kermit field, which lies partly in West Virginia and partly in Kentucky through a line which crosses the state line between West Virginia and Kentucky at several places, and discharges into the lines already described which carry the gas into the State of Ohio near Portsmouth, Ohio. This same map shows lines of The Columbia Gas and Electric Company, the company which supplies the City of Cincinnati, Ohio, extending through the States of Kentucky and West Virginia to Ball's Gap, West Virginia, where gas is purchased from The United Fuel Gas Company. A full description of this system appears in the testimony of the witness Wallace, the general manager of the United Fuel Gas Company. At page 361 of the printed record the testimony of Mr. Wallace shows that this company has 626 wells in West Virginia and 47 wells in Kentucky. The utter disregard of state lines, with which this company's lines were established, crossing and re-crossing the state lines between Ohio, West Virginia, and Kentucky, to supply communities lying in any of these states which could be conveniently supplied by this company, is so significant of the confidence which the business inter-

ests of the country have reposed in the frequent statemens of this court that, with respect to commercial intercourse, state lines are non-existent, that we quote verbatim the testimony of this witness, as it appears on pages 361, 362, 363, 364 and 365 of the printed record:

"A. Our main transmission line, leading from the Roane county field, beginning at Roxalana, in Roane county, West Virginia, extending to Portsmouth, Ohio, consisting of 10-inch, 14-inch and 16-inch pipe, approximately 125 miles in length. This line is known as our line "A." We also have—

Q. Just a moment, before you get to another line. That line crosses the Big Sandy river, does it not, at Kenova?

A. It does.

Q. And runs through Kentucky, up to a point above Ashland, where it divides and crosses the river into Ohio, at some place above Chinnville, and continues on to Portsmouth, on the other side of—the other branch continues on to Portsmouth, on the other side, on the Kentucky side of the Ohio river; while the branch continues up to Wheelersburg, Sciotoville, New Boston, to Portsmouth on the opposite side, the Ohio side of the Ohio river? Is that the fact?

A. It is.

Q. And this is shown here on the map?

A. It is.

Q. Now, then, to what points is this line particularly designed to transport gas, up to what points? Or, transportation to what points is this line used for?

A. Coal Grove, Ohio, Ironton, Ohio, Wheelersburg, Ohio, Sciotoville, New Boston and Portsmouth, all in the State of Ohio.

Q. Now, what about those towns in Kentucky—that is, Catlettsburg and Ashland, and so on?

A. We have the main line on the opposite side of the river in Kentucky supplying Catlettsburg and

Ashland, Russell, Chinnville, in Greenup county, and Boyd county, Kentucky.

Q. What towns in West Virginia does this line supply?

A. Kenova, Ceredo, Huntington, Barboursville, Ona, Culloden, Hurricane, Nitro, Poca, Sissonville, Clendenin, and other smaller places.

Q. The United Fuel Gas Company produces its gas then in the Roane county filed from its own gas territory, and through its own gas well, and transports this gas through this line supplying these various cities and towns in West Virginia, Ohio and Kentucky, as you have described. Now state whether it does that in its own name directly, as a producing, operating, transporting and supplying company?

A. It does supply all these various places in its own name and with its own gas, transported through these lines. Also, in addition to the river crossing previously spoken of, there is another one at Huntington, supplying Corryville, Bradrick, Proctorville and Chesapeake, in Lawrence county, Ohio.

Q. That crosses the Ohio river there at Huntington?

A. It does.

Q. And is there another crossing, or two crossings, near Kenova?

A. There are two crossings. One of them has been previously referred to, and there is another additional crossing at Chinnville, from Greenup county, Kentucky, into Lawrence county, Ohio.

Q. In addition to that Chinnville crossing, there are two lines that cross the Big Sandy at Kenova, and above, are there not?

A. Yes, sir, one line crossing near Huntington, that has been previously referred to—

Q. No, I mean right there, just above Kenova.

A. There is a line leading across the point at Coal Grove from Boyd county, Kentucky, into Lawrence county, Ohio; a line crossing near Chinnville from Greenup county, Kentucky, into Lawrence county,

Ohio; the line crossing again from Greenup county into Ohio near New Boston, Ohio.

Q. Now, at Portsmouth, Ohio, do you supply the town of Portsmouth direct, in the name of the United Fuel Gas Company, or do you supply some local company there that has the distributing system?

A. We supply the local company at Portsmouth, at the city limits, with gas.

Q. What is the name of that company, do you remember?

A. The Portsmouth Gas Company.

Q. And at all the other towns that you have described, the United Fuel Gas Company maintains the distributing systems itself?

A. It does.

Q. Now, take up the next important transmission line of the company?

A. We have an additional line practically paralelling line "A," previously spoken of, known as our line "S," leading from the Roane county field to Ball's Gap measuring station. This line is approximately 49 miles in length, consisting of 10-inch, 12-inch and 20-inch pipe; by far the larger proportion of it being 20-inch O. D. pipe.

Q. Now, this line supplies, as shown by your map, a number of towns in West Virginia?

A. It does.

Q. And at Ball's Gap, with what line does it connect there?

A. With the 18-inch line belonging to the Columbia Gas and Electric Company, of Cincinnati.

Q. And where did that carry the gas?

A. The 18-inch gas line carries the gas from our measuring station at Ball's Gap, at which point the gas is measured to the Columbia Gas and Electric Company, to their Kenova compressor station; from which point it is compressed and delivered to a 20-inch line to the City of Cincinnati.

Q. How many miles distant?

A. 123 miles from Kenova compressor station to

Cincinnati, and 29 miles from our measuring station to Kenova.

Q. You refer to the only Cincinnati—that is, in Ohio?

A. Cincinnati, Ohio.

Q. Now, what is your next important transmission line?

A. Our next line of importance is an 18-inch line leading from what is known as our Spencer gas field, located in Roane and Jackson counties, West Virginia, to and across the Ohio river, near Ravenswood, West Virginia, at which point we measure the gas before crossing the Ohio river, to the Ohio Fuel Supply Company, of Ohio.

Q. What is the size of that line?

A. The line is 18 inches, outside diameter.

Q. And you supply, do you, a number of towns in West Virginia, before you reach the river?

A. We do.

Q. And the Ohio Fuel Supply Company takes this gas, as I understand, at the low water mark on the Ohio side?

A. It does.

Q. And transports it where?

A. To various cities throughout Ohio.

Q. I beg your pardon.

A. To various cities and towns throughout the State of Ohio.

Q. What are the larger cities or towns? Just name one or two of them, as to get the general direction of it.

A. I am not very familiar with the towns.

Q. Well, if you don't know, it is all right. Now, give us your next line. What is this called on your system—one was "A" and the other was "S," and what is this called?

A. That is called line "E."

Q. Now, then, take your next line.

A. We have another line connecting with our line 'A,' near Kenova, West Virginia, running south to Inez, Kentucky, and ending at Kermit, West Vir-

ginia. This is a 10-inch line, and crosses the state line, or river, near Leach, Kentucky, and Kenova, West Virginia, leading from West Virginia into Boyd county, Kentucky; again crossing the line, the river, between Buchanan and Louisa, Kentucky, crossing the river from Lawrence county, Kentucky, into Wayne county, West Virginia; again crossing the line from Wayne county, West Virginia, near Ft. Gay; leading again into Lawrence county, Kentucky, from Wayne county, West Virginia. This line connects with an 8-inch line and a 6-inch line near Inez, Kentucky, and extends across the river, or state line, into Kermit, Mingo county, West Virginia; then entering our compressor station at Kermit, West Virginia, the gas is compressed and delivered back into our line, our 16-inch C. D. line, known as 'B. M. 22.'

Q. Extending from where?

A. From Kermit, West Virginia, this line B. M. 22 leads to Inez, Kentucky, from the compressor station in Kermit, West Virginia.

Q. Now, the gas that is obtained in this line, as you have described, comes, in part from the Roane county filed, from the Wayne county field, and the Kermit field, in West Virginia?

A. Also from the Kanawha field in Clay county.

Q. And the Clay county field and the Chapmanville field or district in West Virginia, and from the Kermit field in Martin county, Kentucky, does it not?

A. It does.

Q. And that gas is all mixed and compressed at your Kermit station in West Virginia.

A. It is.

Q. And sent up as far as Inez, across the river to Inez, in Kentucky?

A. It is.

Q. And there delivered to whom?

A. To the Central Kentucky Natural Gas Company, supplying towns and cities in Central Ken-

tucky and the Louisville Gas and Electric Company, of Louisville, Kentucky.

Q. The Louisville Company supplies gas to Louisville, Kentucky, does it, as well as to stations en route?

A. Its gas is practically all supplied to domestic consumers in the city of Louisville, Kentucky.

Q. How far is the gas transported by the Central Kentucky Company, the longest distance, from Inez?

A. The distance from Inez, Kentucky, to Frankford, Kentucky, is 142 miles.

Q. And how far is it from Inez to Louisville?

A. The distance from Inez, Kentucky, to Louisville, Kentucky—the length of this line is 180 miles.

Q. Now you supply from this same line, do you not, beginning at Kenova, towns on both sides of the river in West Virginia and Kentucky, at different points along the line?

A. We do.

Q. Then you have quite a number of such towns, as shown on the map here?

A. We have.

Q. Now give us your next large transmission line?

A. Our next large transportation line is known as line 'T,' 20 inch O. D. pipe; which line connects with, or has an extension known as our line 'M,' 16-inch O. D. pipe. These two lines were practically built to supply the Hope Natural Gas Company and the Pittsburgh and West Virginia Natural Gas Company, transporting the gas from the Kanawha county gas fields at Buff Lick, and also the gas from Rome and Kanawha counties, near Clendenin.

Q. Now, how long is that line?

A. The line 'M,' consisting of 10, 12 and 16-inch pipe—the larger proportion of it being 16-inch, is 19.2 miles in length.

Q. Now line 'T'?

A. Line 'T,' to which line 'M' connects, is 39.29 miles in length.

Q. About 60 miles then altogether.

A. Yes, sir.

Q. Now you say it sells gas there—it delivers gas to the Hope Natural Gas Company and the Pittsburgh & West Virginia Gas Company. At what points does it make that delivery?

A. At Cedarville Measuring Station, in Gilmer county, West Virginia.

Q. And where does the Hope Natural Gas Company take it?

A. At that point, Cedarville, West Virginia.

Q. And where does it take it?

A. I couldn't tell you just what points it travels. I believe it eventually leads to Hastings Station in Wetzel county.

Q. Do you know where the Pittsburgh & West Virginia Gas Company takes it?

A. The gas is measured to them at the same point in Gilmer county.

Q. To what point do they take it?

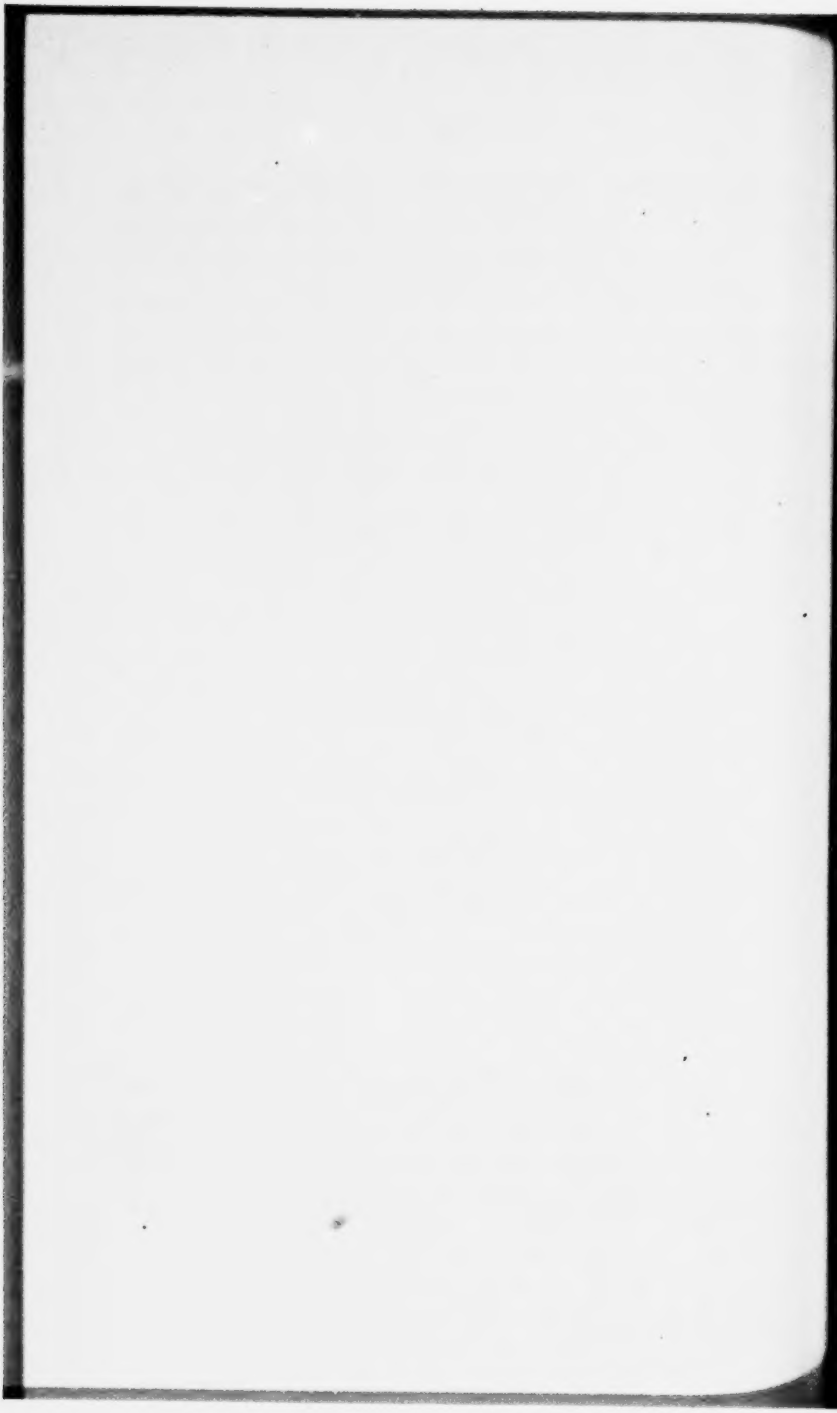
A. That gas is eventually delivered to Pittsburgh, Pennsylvania."

The testimony of the witness Wallace on page 367 shows that this company had, in the year 1919, 24,559 domestic consumers in the State of West Virginia, and 11,777 consumers in other states. It also had industrial consumers, both inside and outside the state.

THE OHIO FUEL SUPPLY COMPANY.

The Ohio Fuel Supply Company, a gas company operating entirely inside the State of Ohio, purchases West Virginia gas from The United Fuel Gas Company at Ravenswood, which appears upon the map of The United Fuel Gas Company hereinbefore discussed and inserted. The Ohio Fuel Supply Company has a net work of pipe

lines extending over the entire central portion of the State of Ohio, with some branches running farther in all directions. A map of the system of this company was offered at page 974 of the printed record by the witness Wyer as Pennsylvania Exhibit 49 and appears in the printed record at page 1601. A copy of this map is here inserted.

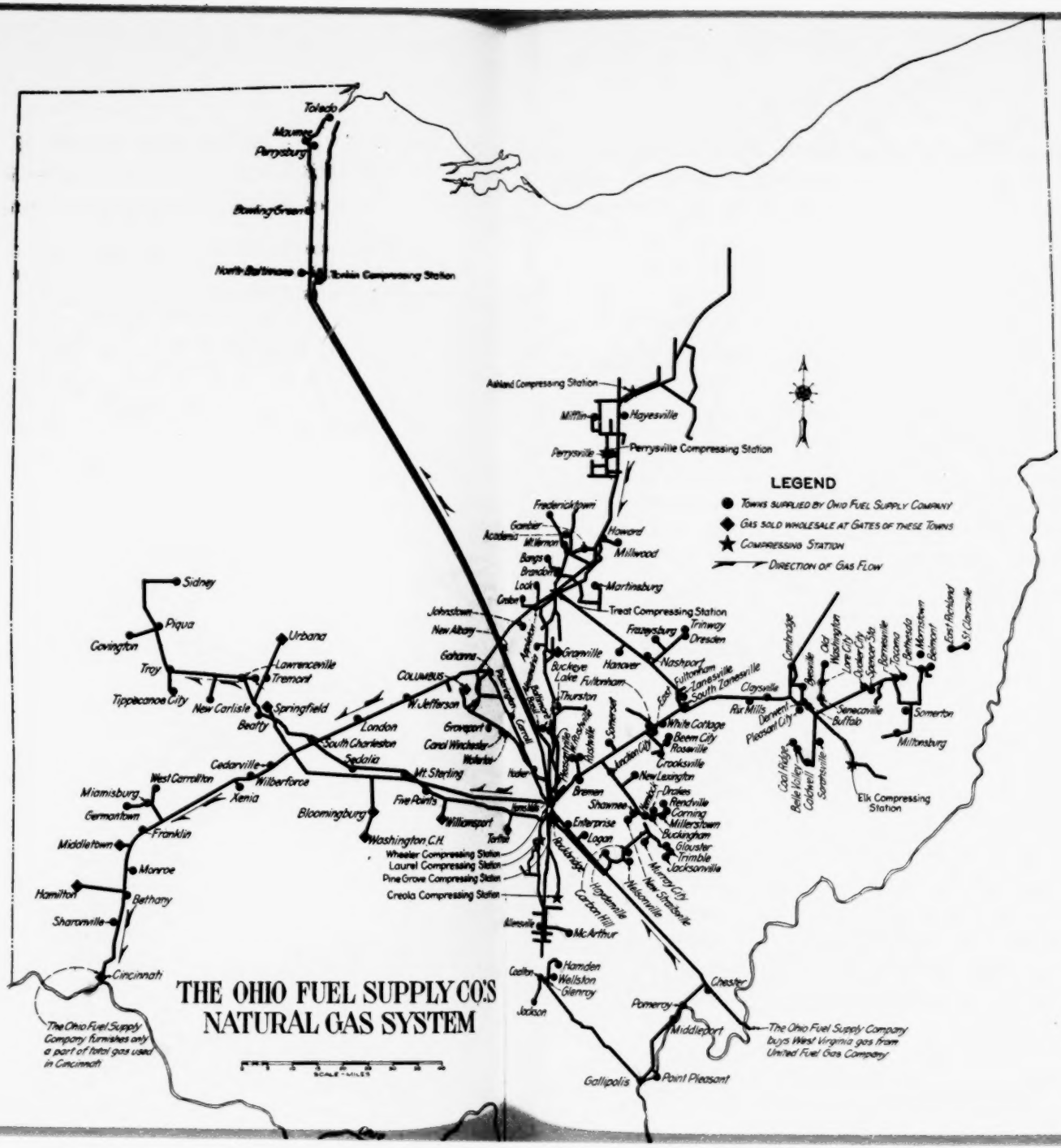


PENNSYLVANIA EXHIBIT 49.

Offered at p. 974 of Printed Record by Witness Wyer.

Map of the Ohio Fuel Supply Company's System.

This also replaces Ohio Exhibit 2 and shows the lines of the Northwestern Ohio Natural gas Company to Toledo, as described at p 717 of printed Record by Witness McMahon.


THE OHIO FUEL SUPPLY CO.'S
NATURAL GAS SYSTEM
LEGEND
Towns supplied by Ohio Fuel Supply Company
Gas sold wholesale at gates of these Towns
Compressing Station
Direction of Gas Flow
Toledo
Maumee
Perrysburg
Bowling Green
North Baltimore
Tinkin Compressing Station
Ashland Compressing Station
Mifflin
Hayesville
Perrysville
Perrysville Compressing Station
Frederickstown
Gamber
Academia
Mt Vernon
Howard
Millwood
Bangs
Brandon
Martinsburg
Lock
Ceder
Treat Compressing Station
Johnstown
New Albany
Frazeysburg
Trinway
Dresden
Gahanna
Granville
Buckeye Lake
Hanover
Nashport
Fultonham
Zanesville
South Zanesville
Claysville
Rut Mills
Dexter
Pleasant City
Senecaville
Buffalo
Somerton
Miltonsburg
Centrange
Jessville
Old Washington
Lore City
Cruzer City
Spencer Sta
Barnesville
Tacoma
Bethesda
Morristown
Belmont
East Richland
St Clairsville
Coal Ridge
Belle Valley
Caldwell
Sarahsville
Elk Compressing Station
COLUMBUS
W. Jefferson
Thurston
Somerset
Crooksville
New Lexington
Drakes
Rendville
Corning
Millersdown
Buckingham
Glouster
Trimble
Jacksonville
Murray City
New Straitsville
Nelsonville
Hydrolite
Carbon Hill
McArthur
White Cottage
Beem City
Roswell
Granport
Canal Winchester
Waterloo
Lancaster (2)
Rushville
Basil
Bremen
Shawnee
Enterprise
Logan
Reynoldsburg
Wheeler Compressing Station
Laurel Compressing Station
Pine Grove Compressing Station
Creola Compressing Station
Millersport
Tarlton
Fairfield
Fire Points
Washington C.H.
Bloomingburg
Sidney
Piqua
Covington
Troy
Tippecanoe City
Urbana
Lawrenceville
Tremont
New Carlisle
Springfield
Beatty
London
South Charleston
Sedalia
Cedarville
Mt. Sterling
Yoder
West Carrollton
Miamisburg
Wilberforce
Xenia
Germantown
Franklin
Middletown
Monroe
Hamilton
Bethany
Sharonville
Cincinnati
Hamden
Wellston
Glenroy
Coalton
Jackson
Chester
Pomeroy
Middleport
Gallipolis
Point Pleasant
The Ohio Fuel Supply Company furnishes only a part of total gas used in Cincinnati
The Ohio Fuel Supply Company buys West Virginia gas from United Fuel Gas Company
SCALE - MILES

(The main line of The Northwestern Ohio Natural Gas Company, hereinbefore referred to, are also shown on this map, there being two lines extending from a point marked Horn's Mill, in a northwesterly direction to a point in Hancock county, a distance of 121 miles, and thence on to Toledo, a distance of 38 miles. Record, pages 717 and 718.)

The detailed testimony with reference to the system of The Ohio Fuel Supply Company was given by the witness Denning, the vice-president of The Ohio Fuel Supply Company, beginning at page 650 of the printed record.

The two general sources of gas supply of The Ohio Fuel Supply Company are gas produced in Ohio and that produced in West Virginia, the latter by reason of contract relations with The United Fuel Gas Company. (Record, page 656.) That part of its system which carries gas to Cincinnati is the 18-inch line beginning at Homer Station and extending in a southwesterly direction to Cincinnati, approximately 170 miles, built in 1905, and through which flows gas produced in Ohio and that produced in West Virginia. (Denning, 655, 656.) The 18-inch line of The Ohio Fuel Supply Company extending from Wheeler Station southeasterly to the Ohio river and connecting with the 18-inch line of The United Fuel Gas Company was for the express and only purpose of procuring and transporting gas from West Virginia. (Denning, page 665.) The lines of The Northwestern Ohio Natural Gas Company—its transmission system—were built and laid exclusively for the sole and only pur-

pose of obtaining West Virginia gas. (Denning, page 666.)

The witness Denning testified that this company, and all companies, within the knowledge of the witness, are constantly exercising efforts to discover not only new sources of supply, but additional gas within known fields. (Denning, pages 670, 671, 713.)

The gas supplied by The United Fuel Gas Company to The Ohio Fuel Supply Company on the Ohio side of the river is transported to the Wheeler station at Sugar Grove, Ohio, and is there mingled with gas produced in Ohio, and is all supplied to communities in Ohio except a portion which is transported back into West Virginia to supply the municipality of Point Pleasant, where the distributing company, The Point Pleasant Natural Gas Company, is owned by The Ohio Fuel Supply Company. The Ohio Fuel Supply Company supplies directly the 137 cities listed on pages 667, 668 of the record, and also wholesales gas and supplies indirectly, through its subsidiary companies, The Northwestern Ohio Natural Gas Company, and The Point Pleasant Natural Gas Company, the cities of Toledo, Bowling Green, North Baltimore, Maumee and Perrysburg, Ohio, and Point Pleasant, West Virginia. In addition, The Ohio Fuel Supply Company wholesales gas to utilities and municipalities for the purpose of supplying the same to Ohio consumers, as shown by the list on page 669 of the printed record. Altogether it is responsible for the natural gas supply of approximately one million people in Ohio. (Denning, 672.) The number of municipalities, churches, schools, state in-

stitutions and public buildings furnished gas during the year 1919 by this company were:

Municipalities	135
Churches	130
Schools	57
State Institutions	43
Public Buildings	170

The Ohio Fuel Supply Company has not taken on new towns in Ohio for several years past. [Denning, 691.] It requires all of the gas which it has been able to get from West Virginia, and more, to meet its present obligations. (Denning, 696.)

The United Fuel Gas Company has not been able, during cold weather, to furnish to The Ohio Fuel Supply Company the amount of gas which it has contracted to furnish to that company. (Denning, 696.)

THE UNION GAS AND ELECTRIC COMPANY.

The Union Gas and Electric Company of Cincinnati is the distributing company that supplies the city of Cincinnati with natural gas. It purchases this gas from The Columbia Gas and Electric Company and The Ohio Fuel Supply Company. (Record, page 454.)

The Columbia Gas and Electric Company owns 253 gas wells, 122 miles of field lines and a considerable acreage, operated and unoperated, in the State of West Virginia. In addition, it has a twenty mile pipe line connecting with the United Fuel Company's lines at Ball's Gap, West Virginia, through which it secures a further supply. All of the natural gas used in the city

of Cincinnati is West Virginia gas, except such portion of the gas furnished by The Ohio Fuel Supply Company as is produced in the State of Ohio, which is a very small proportion of the total gas supply of the city of Cincinnati, and even now in cold weather amounts to almost nothing. (Record, page 459.)

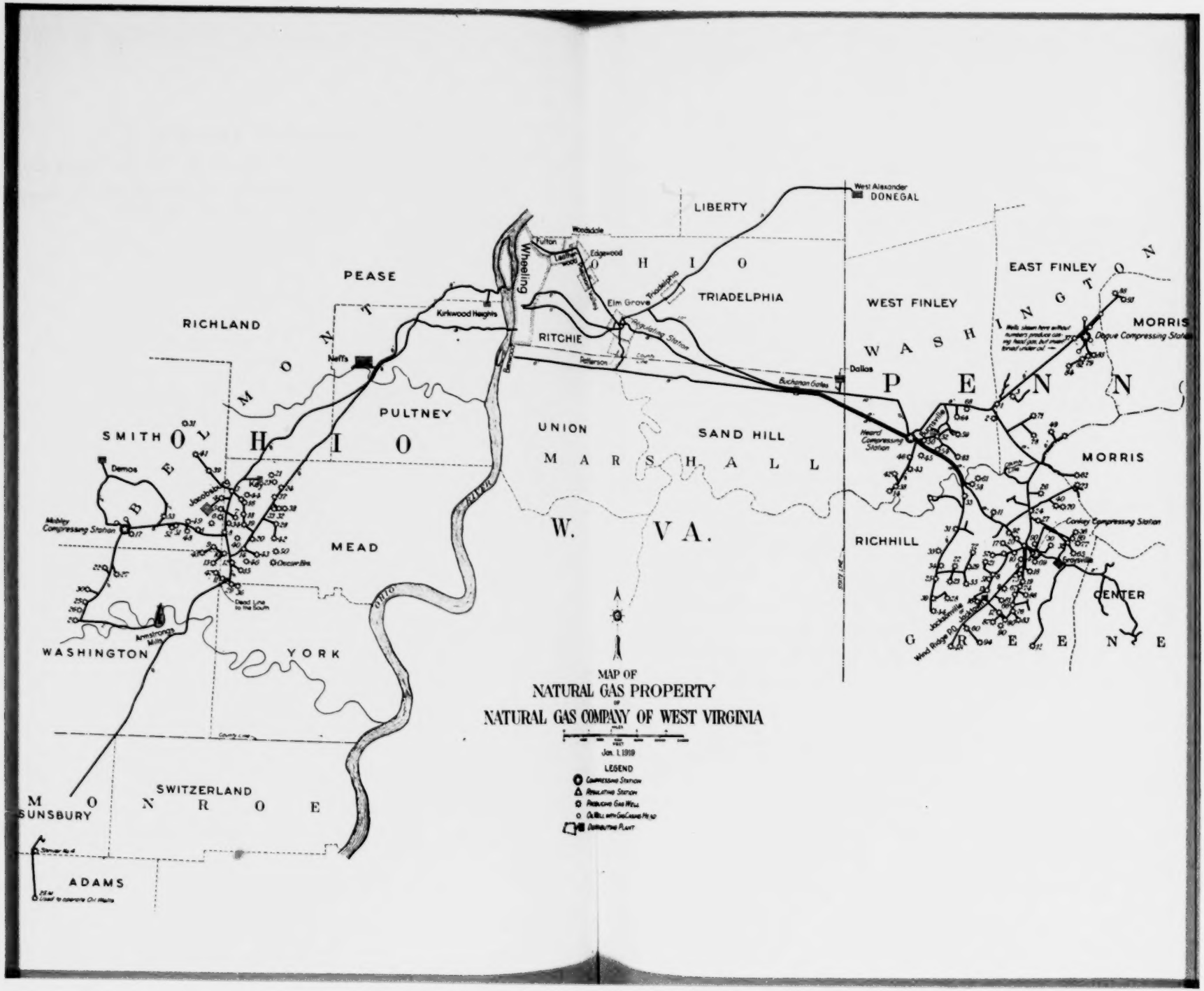
THE NATURAL GAS COMPANY OF WEST VIRGINIA.

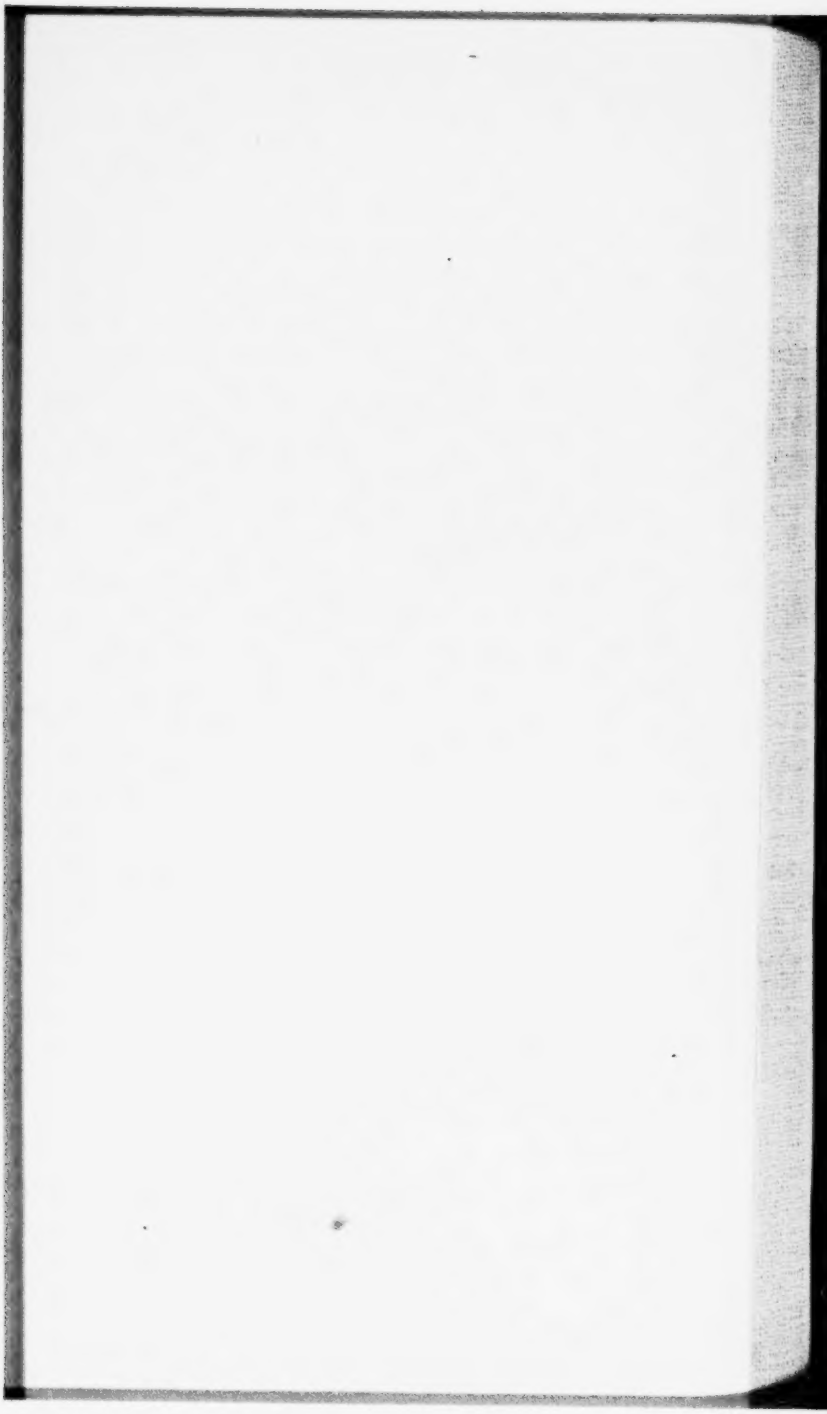
The Natural Gas Company of West Virginia has gas wells, lines and territory in the States of Ohio, West Virginia and Pennsylvania. The detailed explanation of the affairs of this company appear in the testimony of the witness, Batchelor, at pages 741-747 of the record. A map showing the lines and wells of the southern division of this company was introduced in evidence at page 746 of the printed record by the witness Batchelor, and appears in the record at page 1566, being Pennsylvania Exhibit No. 26, which map is here inserted.

PENNSYLVANIA EXHIBIT 26.

Offered at p. 746 of Printed Record by Witness Batchelor.

Map Showing Natural Gas Property of Natural Gas Company of West Virginia—Southern Division.


LIBERTY
West Alexander
DONEGAL
Woodsdale
Fulton
Edgewood
Elm Grove
Triadelphia
TRIADELPHIA
PEASE
Wheeling
Kirkwood Heights
RICHLAND
RITCHIE
Neff's
Pennsboro
Pattersons
Buchanan Gates
Dallas
WEST FINLEY
EAST FINLEY
MORRIS
Dague Compressing Station
PULTNEY
SMITH
UNION
SAND HILL
MARSHALL
Heard Compressing Station
Conley Compressing Station
Demos
Jacobsburg
Wiley
Mobley Compressing Station
Oscar Bee
MEAD
W. VA.
RICHHILL
CENTER
Dead Line to the South
Armstrong Mills
WASHINGTON
YORK
SWITZERLAND
SUNSBURY
ADAMS
MAP OF
NATURAL GAS PROPERTY
OF
NATURAL GAS COMPANY OF WEST VIRGINIA
Jan. 1, 1919
LEGEND
Compressing Station
Regulating Station
Producing Gas Well
Oil Well with Gas Casing Head
Distributing Plant



The gas production of this company is all in the States of Pennsylvania and Ohio. It has not and never has had any gas production in West Virginia. (Batchelor, 743.) Yet for the most part, it markets its gas in the State of West Virginia to 14,137 consumers, including Wheeling and Benwood, West Virginia. Of the gas supplied in West Virginia, 37 per cent. is consumed by industrial concerns.

THERE IS NO MONOPOLY OF THE GAS SUPPLY AND INDUSTRY IN WEST VIRGINIA.

An examination of the evidence with reference to the ownership of the principal gas companies operating in the State of West Virginia, exporting gas from West Virginia shows that ownership to be as follows:

The Hope Natural Gas Company is owned and The Reserve Natural Gas Company is controlled by The Standard Oil Company of New Jersey. (Record, p. 188.) This company also owns The East Ohio Gas Company, operating in Ohio, and The Peoples Natural Gas Company in Pennsylvania. (Record, pp. 325, 424.)

The Pittsburgh and West Virginia Company, The Carnegie Natural Gas Company, The United Fuel Gas Company, The Manufacturers Light and Heat Company and The Fayette County Gas Company are in no way affiliated with the Standard Oil interests. (Record, p. 356.) The stock of The United Fuel Gas Company is owned by The Columbia Gas and Electric Company and The Ohio Fuel Supply Company. (Record, pp. 378-379.) The Carnegie Natural Gas Company is a subsidiary of The

United States Steel Corporation. (Record, p. 172.) The evidence shows that these gas companies have in fact engaged in and do engage in the keenest competition, formerly in finding markets for the gas when there was a surplus, and at the present time in securing gas to supply the already established markets. (Record, pp. 12-13.) Competitive bidding for leases is keen at the present time, even more keen than formerly. (Record, pp. 45, 46, 220, 371, 827.) There is a greater demand for even reasonably good territory now than there ever was before, and there is stronger competition to secure that territory than ever before. (Record, pp. 357, 371.)

There certainly has been strong competition, and we feel that competition is stronger today than it ever was. There is a greater demand for gas territory now than there ever has been, and a greater endeavor by these different gas companies to get it—even reasonably good territory. (Corrin, 357.)

The undisputed testimony, then, and the facts relative to the ownership of the principal gas companies operating in West Virginia, show that the claim of an unlawful combination between these companies is entirely without foundation. Several of the companies are large, and do have large affiliated companies in the other states, to which companies they supply this gas. However, a large combination of capital is required to lay gas lines for hundreds of miles and install the necessary equipment for causing the gas to flow through those lines, in addition to the capital required to hold a sufficient reserve acreage to protect these investments. The size of the

company which undertakes to carry on such an enterprise is hardly a fault, but rather a necessity.

It is not apparent how the rights of the plaintiff state and its citizens with respect to a continuation of the gas supply secured to them by interstate pipe lines and contracts, can be abridged, even if the charge that the gas territory of West Virginia is controlled by seven big companies were true. Even should the seven companies be combined into one, and the one be a sole and complete monopoly, the remedy to prevent an alleged hardship upon West Virginia consumers would not be by an act which expressly discriminates against the consumers residing out of West Virginia and against the plaintiff states as consumers of gas.

The defendant has not even correctly selected the seven large operating gas companies in West Virginia in that it has omitted to name the West Virginia Central Gas Company, one of the group of companies known as the Eastern Oil Company group supplying West Virginia gas to Cumberland and other Maryland cities. The seven companies which defendant has named do not have control of West Virginia gas resources nor are they combined in interest as defendant seeks to imply by grouping them together. There are between 40 and 50 gas utilities supplying West Virginia cities. (Stipulation, pp. 1365-1366.)

Many of the local utilities have a great spread of pipe lines, large areas of undrilled and undeveloped territory, and suitable compressing stations. (Robinson, 1374-1378.)

Operators other than the seven companies hold 43.2% of the developed acreage and 43.1% of the undeveloped acreage and in arriving at these percentages there are many operators whose holdings could not be ascertained. (Robinson, 1390-1391, Pennsylvania Exhibit 54.)

There are no contracts between the seven companies or any of them restricting development, territory, or production, or dividing territory. Such contracts as exist between some of the companies are for the purpose of buying and selling severed gas already produced, made at a time when one company had a surplus production and the other had requirements for the market beyond its then existing production. These contracts are in evidence. Many of them provide for deliveries of gas within West Virginia from which delivery points many West Virginia cities are served as well as cities outside of the state. For example, the contract for sale of gas by The Hope Natural Gas Company to the Manufacturers Light and Heat Company, (Record, p. 1712), provides for delivery at three points within the State of West Virginia from which delivery points the Manufactures Light and Heat Company takes its purchases of gas and transmits the gas to Wheeling, Moundsville, and many West Virginia cities and also its markets in Pennsylvania and Ohio.

There are no contracts whereby the Carnegie Natural Gas Company sells to or buys from any of the other seven companies, but it does sell gas to both the local company serving Morgantown and the local company serving Fairmont, West Virginia. (Record, p. .....)

There are no contracts whereby the Philadelphia Company group sells to or buys from the Standard Oil Company group or sells to or buys from the Manufacturers Light and Heat Company.

The Reserve Gas Company has no contracts with any of the other six, excepting the Hope Natural Gas Company. Omission:--See Pages 205 et seq.

NATURAL GAS SERVICE IS IMPRACTICABLE UNLESS THE PEAK LOAD OF THE DOMESTIC DEMAND CAN BE MET.

All the evidence in the case is to the effect that the purpose with which the great systems of production, transportation and distribution of natural gas were established was the furnishing of gas to domestic consumers. The contracts in evidence provide for the furnishing of natural gas by the companies producing it in West Virginia to the companies distributing it in the plaintiff states, for the purposes of domestic consumption. The physicial situation and the practical operation of the plants proves this, the lines being laid to centers of population, and the gas being distributed to thousands of domestic consumers instead of to a few large industrial plants. The demand for gas for domestic consumption, that is, for cooking, lighting, heating, and hot-water heating, exists throughout the year, but fluctuates greatly in amount during the different seasons. There is during the summer months a demand, though comparatively small, for gas for cooking, lighting and hot-water heating. During the colder weather,

when the heating demand is added, a peak load condition is created. We quote the description of peak load conditions as described by two witnesses, (1) Sullivan—page 222:

"A. The peak load is the demand created by the increased quantity of gas required by consumers on cold days and at certain hours of the day. In cold weather, on an extremely cold day, the demand of the average domestic consumer will be from four to five times greater than it is on the normal days. Then there are certain hours in the day when the demand is very considerably increased above the normal demand. This creates a very increased demand, which probably at times is as high as 15 to 20 times more than the regular average daily load."

And (2) Denning—page 711:

"Using the term 'peak load' in this sense, meaning the greatest amount of gas which the domestic consumer requires or thinks he requires to meet his needs at the time, during very extremely cold weather; in other words, the greatest amount of gas that will be required of you at any particular given time. Now the seasonal peak load will always reach us during the cold weather periods. * * * There will come a sudden drop in temperature and the mercury will go down below zero. At once everyone begins to turn on his gas, getting cold, and the demand becomes a peak very much greater and the quantity of gas required is at once increased; that is a seasonal demand, a seasonal peak load which always reaches us during the winter; it may last only a day or two at a time; it may last for two or three weeks, depending entirely on weather conditions, which we cannot forecast. There is a daily peak load, even in the summer time, running usually during the breakfast hour in the morning, as a rule, but at noon there comes another, due to the preparation of the noon meal, not being so great. The evening meal is what is called the supper peak." * * etc.

A very excellent description of peak load requirements and conditions and the operating conditions that must exist in order to meet peak load requirements, is given by witness Quay at Record, pages 56-57.

If the transportation and distribution systems are to continue to be of value, it is necessary that the gas company be able to serve all the consumers upon whose patronage they are primarily dependent, namely, the hundreds of thousands of domestic consumers, throughout the whole year. If the service is intermittent, it is worthless, and will, necessarily, be discontinued. The testimony of the witness Denning at page 677 of the record, is as follows:

> "One of the great values of natural gas service, and its prime requisite, is its continuity of service; the ability of the consumer to step into his house any hour of the day for the 365 days of the year and, by simply turning a little stop-cock and lighting the gas, have an instantaneous service at his command. A problem of the gas company has always been to supply that instantaneous demand and maintain that continuity of service. We have reached a point where, as I said yesterday, during extreme cold weather we are unable to meet the entire demand of the consumer. To have any considerable or substantial quantity of gas diverted or eliminated from our West Virginia supply means to so disarrange and disorganize, and I may say discontinue the service to the consumer, as to practically render it useless to the domestic consumer."

The producing, transporting and distributing gas companies, as well as the governmental authorities, have recognized the fact that domestic consumers must have

service at all seasons, and have made every effort to insure an ability to render continuous service to the patrons upon whom they are primarily dependent, even during the periods of maximum demand. This has been accomplished by the original contracts between the companies, by administrative orders of the Public Utilities Commission of Ohio, and by reasonable rules and practices adopted and enforced by the gas companies themselves. We here make specific reference to the provisions of the contracts between the gas producing companies and the distributing companies, which contracts provide for the preference to the domestic consumers.

The contract between The Hope Natural Gas Company and The East Ohio Gas Company, Pennsylvania Exhibit 19, appearing at page 1544 of the Record, provides for the furnishing by The Hope Company to The East Ohio Company of all the gas requisite for the supply of the domestic consumers of The East Ohio Gas Company and provides that any contracts made by The East Ohio Company for the supply of gas for manufacturing purposes must be made with the consent and approval of the Hope Company. (Record, p. 1545.) This contract further specifically provides for a full supply of gas to the domestic consumers of the Hope Company in West Virginia, before any gas is deliverable under the contract even for domestic consumption outside the State of West Virginia. (Record, pp. 1546, 1547.)

The contract between The Hope Natural Gas Company and The Peoples Natural Gas Company, Pennsylvania Exhibit 17, Record, p. 1524, contains similar provisions. (Record, pp. 1525, 1533, 1534.)

The contract between The Hope Natural Gas Company and The Northwestern Ohio Natural Gas Company, Pennsylvania Exhibit 16, Record, p. 1509, at 1510, provides that the gas supply furnished under this contract is to be used for domestic consumers.

The contract between The Mountain State Gas Company and The River Gas Company, Pennsylvania Exhibit 20, Record, page 1554, provides for the sale of all the natural gas required by The River Gas Company for the supply of all the consumers of that company paying domestic rates, and for such further amounts as may be required by The River Gas Company to fulfill contracts for the supply of gas for manufacturing purposes, such contracts to be made with the consent of The Mountain State Gas Company. **The latter company expressly reserves the right to prefer its domestic consumers in West Virginia.** (Record, p. 1556.)

The contract between The Hope Natural Gas Company and The Fayette County Gas Company, Pennsylvania Exhibit 21, Record, p. 1560, provides for the supply of gas for consumers paying domestic rates. It further provides for a preference to the domestic consumers connected with its own system in West Virginia and those connected with systems in West Virginia, which it is supplying with gas. (Record, p. 1565.)

The contract between The United Fuel Gas Company and The Ohio Fuel Supply Company, West Virginia Exhibit 38, (Record, p. 1761) measures the amount which The Ohio Fuel Supply Company is entitled to receive by the demands of its domestic consumers. (Record, p.

1761.) It reserves to The United Fuel Gas Company "the right to supply all of its domestic consumers in West Virginia and the domestic consumers in West Virginia of all companies whose capital stock or a majority thereof is owned by The United States Fuel Gas Company. (Record, p. 1764.)

The Public Utilities Commission of Ohio issues from year to year what it terms its administrative orders to the natural gas companies of Ohio, classifying the consumers, and ordering that in case of any shortage that would render the companies unable to meet the needs of all classes of consumers, the gas is to be shut off from all classes other than domestic, to the end that domestic consumers may have the first and prior right to the gas. (Rec., p. 578.) The Commission issues from time to time during periods of cold weather its so-called emergency orders, pursuant to Section 614-32, General Code of Ohio, (Rec., p. 681) limiting, where necessary, domestic consumers to a maximum number of cubic feet of gas per day. (Rec., pages 578, 681.) Sufficient of these orders to show their nature and extent were offered by the witness, Mr. Denning, at page 681 of the printed record, and are shown in the record at pages 1695, 1706, being Ohio Exhibits Nos. 3-9, inclusive. The text of the general administrative order No. 34, issued May, 1918, which is reissued annually by the Commission, being Ohio Exhibit 17 (at page 1703 of the Record) is as follows:

"Administrative Order No. 34.

The Public Utilities Commission, having under consideration the probable inability of natural gas companies to furnish an adequate supply to all their

consumers during the coming winter, and the necessity of formulating more definite rules for the guidance of such public utility companies in disconnecting industrial and other consumers from the service, when necessary, during an emergency, to conserve the supply for domestic consumers, and the order in which disconnection should be made, as well as the order in which the service should be restored when the emergency is passed, hereby adopts the following rules and regulations, to wit:

1. That for the purpose of disconnecting or curtailing service to consumers during an emergency, all consumers of natural gas are divided into two general classes, namely: Domestic Consumers and Industrial Consumers.

2. That domestic consumers, for such purposes, include the users of natural gas for heating, lighting and cooking in private homes, boarding houses and apartment houses; and users of natural gas for lighting and cooking only, in hotels, restaurants, bakeries, eating places, club houses, hospitals and other charitable institutions.

3. That all other consumers shall be designated as "Industrial Consumers;" but for the purpose of disconnecting or curtailment during an emergency, the following subdivisions of industrial consumers may be made, in cases where there is more than a sufficient supply of gas for domestic consumers as herein specified, but not a sufficient supply for all industrial consumers:

A. Users who are not included in the domestic consumer's class, as herein specified, but who are engaged in preparing or preserving foodstuffs, or food producing plants, for such purposes only.

B. Industries directly engaged in manufacturing or producing war materials, for such purposes only; and users of gas in gas engines.

C. All other industrial consumers.

When there is not sufficient gas for all industrial consumers, as herein defined, the surplus shall be furnished to industrials in the order above named.

4. This classification is subject to the following exceptions: Where natural gas is being used in limited qualities for scientific, experimental or mechanical purposes, and where other means of producing light and heat for such purposes cannot be reasonably substituted, an amount essential to such use, but not to exceed five thousand (5000) cubic feet per month to each consumer so engaged may be used for such purposes only, and as if they were included in the class of domestic consumers herein specified.

5. If, after disconnecting all industrial consumers, there is not a sufficient supply of gas for the domestic consumers, then all boilers and furnaces not provided with gas fixtures and appliances primarily designed for burning natural gas as a fuel shall be disconnected; and if it becomes necessary to further restrict the use of gas to meet the emergency, domestic consumers may be limited to the use of thirty-five thousand (35,000) cubic feet per month, in one building, or for one family.

6. A copy of these regulations shall be furnished by each natural gas company to its consumers not later than June 15, 1918.

7. Consumers who do not promptly disconnect or curtail, in accordance with these rules and regulations, when notified by the utility that it is necessary so to do, shall, upon discovery, be wholly disconnected from the service until the emergency is passed."

What is accomplished by virtue of these various orders of the Public Utilities Commission was, prior thereto, voluntarily practiced by the gas companies. (Rec., p. 680.) That these orders are carried out is shown by the record: The East Ohio Gas Company,

which supplies Cleveland, Akron, Canton, Youngstown and numerous other municipalities in Ohio, confines its gas service strictly to domestic consumption during the cold weather, or winter period. (Rec., p. 578.) The Ohio Fuel Company limits its supply of gas to domestic consumers at all times when the supplying of gas to other consumers would impair its supply to domestic consumers. (Rec., p. 680.) The Logan Natural Gas & Fuel Company, and all of the other subsidiaries of the Union Natural Gas Corporation, supplying more than fifty municipalities in Ohio, furnish no industrial gas during the six months winter period. (Rec., pages 781, 793.) The North Western Ohio Natural Gas Company furnishes gas for industrial purposes during the summer months only. During the year 1919, less than 6% of the gas distributed by this company was to consumers other than domestic. (Rec., pages 721, 722.) The companies held by The Pure Oil Company which supply Columbus, Springfield and Dayton, Ohio, cut off their industrial consumers in the winter season. (Rec., p. 634.) The Union Gas & Electric Company, distributing gas in Cincinnati and suburbs, cuts off all industrial consumers during the cold weather, its own power plant being first. (Rec., page 458.)

The record discloses sufficient facts to warrant the statement that, in the very near future, Ohio will be on a strictly domestic basis of gas consumption, thus conserving this exceptional fuel for the use that will render the greatest service to the public. Even now, companies supplying gas in Ohio and Pennsylvania for industrial purposes, do so only under contracts which give the com-

pany the right to shut off this supply immediately when it becomes necessary to do so in order to take care of the domestic consumers. (Rec., pages 436, 328, 458, 603, 939.)

The provision of the statute which would require an adequate supply to consumers within the State of West Virginia **for all purposes**, whether domestic, industrial, or otherwise, would immediately destroy what has been accomplished by the contracts, the administrative orders and the reasonable rules and practices of the gas companies hereinbefore set forth, and would render it impossible for the gas distributing companies to meet their peak-load demands and render continuous service to domestic consumers. The evidence shows that intermittent service is neither practicable nor possible, and that the utility value of these systems would be destroyed if they were reduced to that condition. (Rec., pages 214, 326, 368, 428, 677, 725.)

VOLUME OF GAS EXPORTED FROM WEST VIRGINIA.

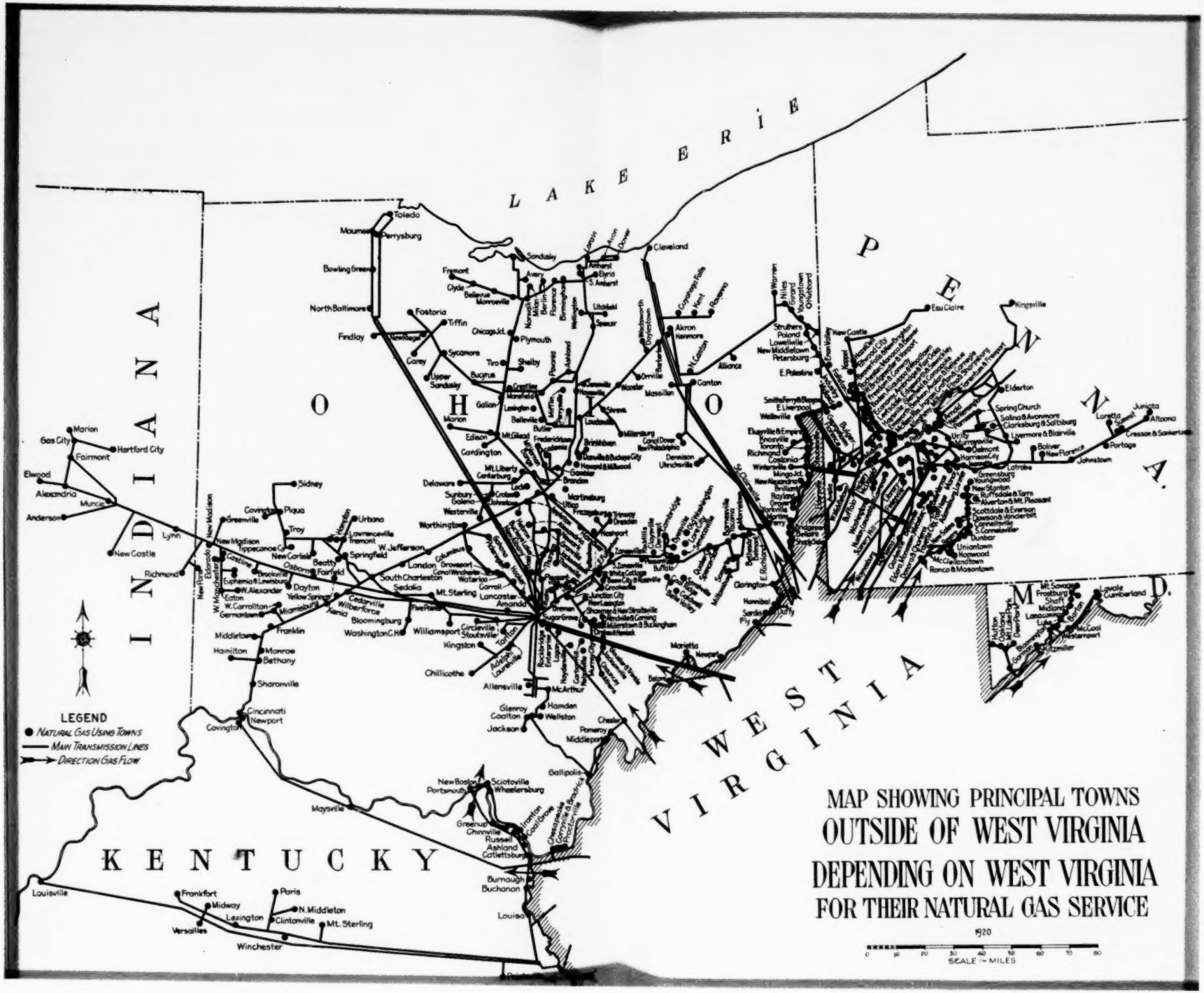
The maps showing the lines of the principal gas companies receiving gas exported from the State of West Virginia, which maps have been inserted heretofore in this statement of facts, show the vast amount of that exportation. A single map was prepared by the witness Wyer and offered at page 914 of the record as Pennsylvania Exhibit 46, which appears at page 1598 of the record, showing the principal towns outside of West Virginia depending upon West Virginia for natural gas

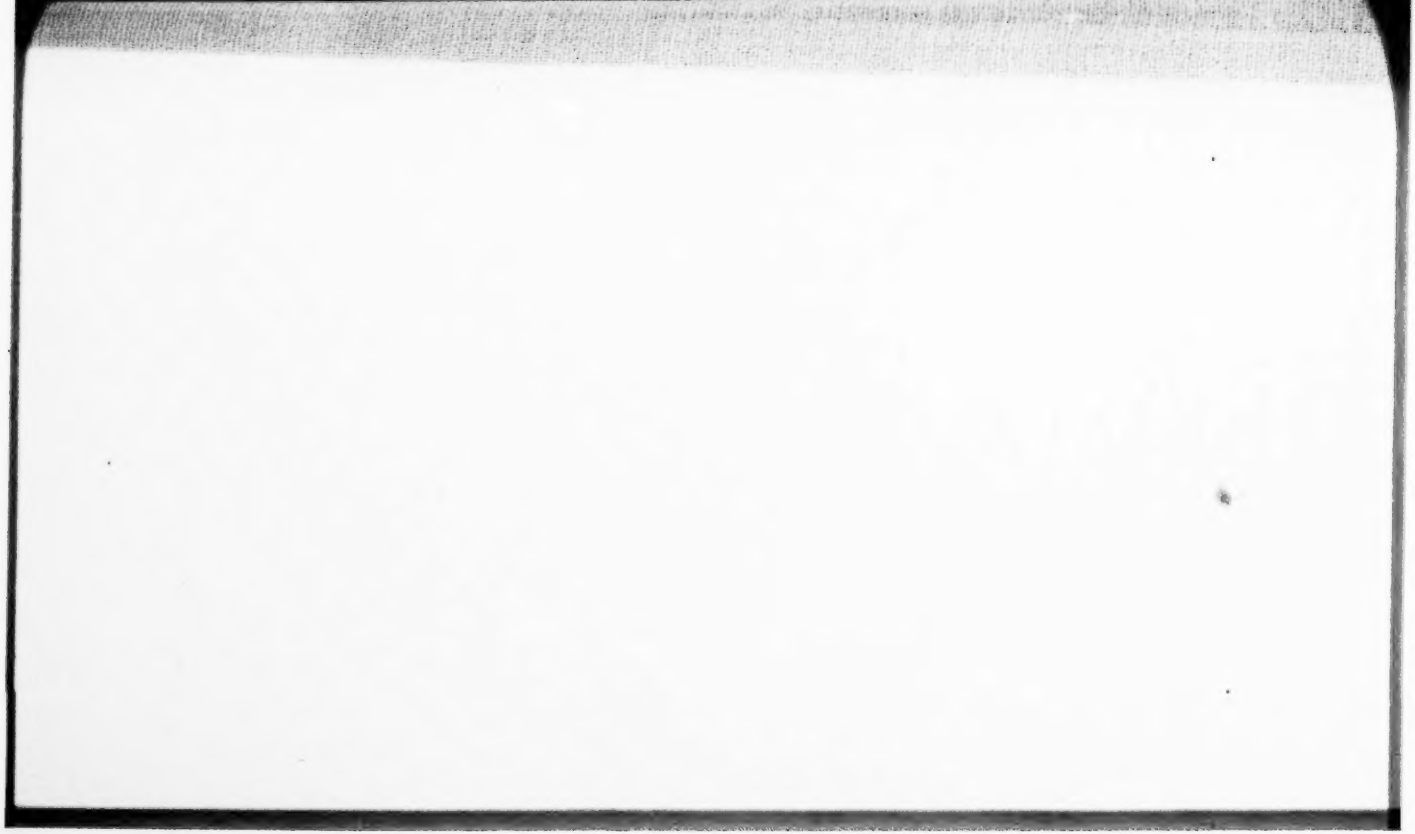
service. We insert here a copy of this map for the purpose of showing graphically the large extent to which communities in Ohio and Pennsylvania, as well as in the other states of Maryland, Indiana and Kentucky, are dependent for their gas supply upon the continued right to receive gas exported in interstate commerce from the State of West Virginia.

PENNSYLVANIA EXHIBIT 46.

Offered at p. 904 of Printed Record by Witness Wyer.

Map Showing Principal Towns Outside of West Virginia Depending on West Virginia for Natural Gas Service.


LAKE ERIE
INDIANA
OHIO
PENNA.
WEST VIRGINIA
KENTUCKY
MD.
LEGEND
NATURAL GAS USING TOWNS
MAIN TRANSMISSION LINES
DIRECTION GAS FLOW
MAP SHOWING PRINCIPAL TOWNS
OUTSIDE OF WEST VIRGINIA
DEPENDING ON WEST VIRGINIA
FOR THEIR NATURAL GAS SERVICE
1920
SCALE — MILES



The testimony of the witness Wyer (at page 895) shows in figures the amount of this exportation. The production of natural gas in West Virginia was at its greatest in 1916. During that year approximately 193 billion cubic feet of gas or sixty-four per cent. of the total production, was exported from the state. In the year 1919 approximately 138 billion cubic feet of gas was exported from the state. (Record, pages 895, 896.) Pennsylvania Exhibit 41, offered at page 895 of the record by the witness Wyer, shows the volume of gas exported from West Virginia in billion cubic feet, and the percentage of the state's total production exported for the years from 1906-1919, inclusive. We insert here a copy of this exhibit.

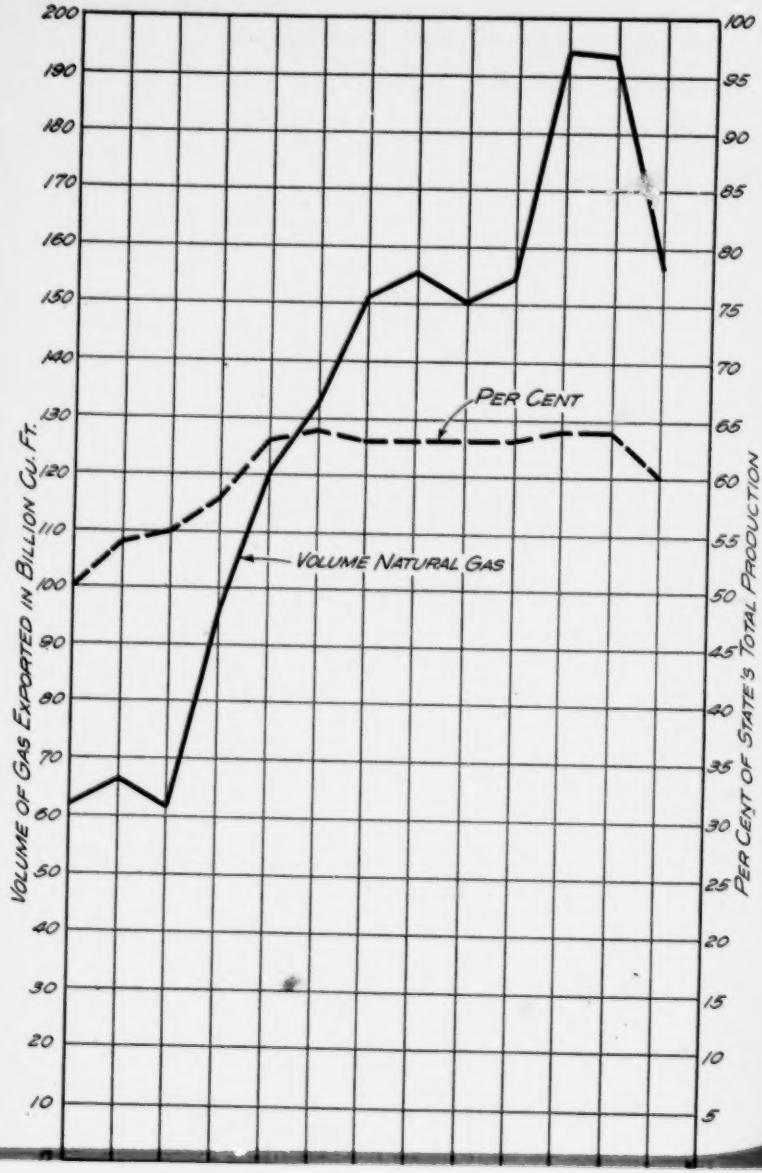
PENNSYLVANIA EXHIBIT 41.

Offered at p. 895 of Printed Record by Witness Wyer.

Volume of Natural Gas and Per cent of State's Total Production Exported from West Virginia.

VOLUME NATURAL GAS
AND
PER CENT OF STATE'S TOTAL PRODUCTION
EXPORTED FROM WEST VIRGINIA

Based on data compiled by the United States Geological Survey.



The exhibit shows that both the volume of gas exported and the per cent. of the state's total production exported increased from the year 1906 to the year 1911, from which time until the year 1916 the volume of gas exported increased, although the per cent. of the state's total production remained practically static; that since the year 1916 both the volume of gas exported and the per cent. of the state's total production exported have gradually decreased.

The testimony of the witness Robinson, and the table prepared by him, being Pennsylvania Exhibit No. 50, offered at page 1378 and appearing on pages 1603, 1604 and 1605 of the printed record, are to the same effect. They show that the percentage of the total production of gas in West Virginia which is exported from the state, was, for the year 1919, 64 per cent.

The percentage of the gas consumed in other states, which is imported into those states from West Virginia is shown by the testimony of the witness Wyer at pages 907, 908 of the Record. It is as follows:

Maryland	100 per cent.
Pennsylvania	35 per cent.
Ohio	50 per cent.
Indiana	80 per cent.
Kentucky	90 per cent.

About 650 towns in these five states depend entirely upon West Virginia gas. (Record, page 907.) Three hundred of these municipalities are in Ohio, three hundred in Pennsylvania, twenty-five in Kentucky, fifteen in Indiana and fourteen in Maryland. (Record, page 908.) The number of domestic consumers dependent

entirely upon West Virginia gas for their natural gas service, and the number of people so dependent, is as follows:

Ohio	725,000	consumers	3,625,000 people
Pennsylvania	300,000	"	1,500,000 "
Kentucky	75,000	"	375,000 "
Indiana	15,000	"	75,000 "
Maryland	10,000	"	50,000 "

IMPROPER USE OF GAS IN WEST VIRGINIA.

The policy of the State of Ohio and of the gas companies distributing gas in that state, of giving the preference at all times to domestic consumers, has been shown. There is much evidence to the effect that gas is being wastefully used in West Virginia, and that it is being extensively and grossly used in industries, although the use therein necessarily accentuates the shortage of gas for the domestic consumers in West Virginia and other states. The testimony of the witness Wyer at page 101 shows that a large saving of gas could be effected by the correction of improper burning equipment, both in industries and by the domestic consumers. (Record, pages 901, 902.) The practice of domestic consumers of neglecting to turn off the gas in mild weather and thereby grossly wasting it, is shown by the testimony of the witness Wyer. (Record, page 901.)

These observations are fully borne out by the statistics in the testimony of the witness Wallace (page 368), showing that the average domestic consumer in Charleston, West Virginia, in the year 1919, used more than

twice as much as the average domestic consumer in the city of Cincinnati, Ohio. The charts prepared by the witness Wyer, Pennsylvania Exhibits 42, 43, 44 and 45, appearing at pages 1594-1597 of the printed record, hereinbefore inserted, show also that the average consumption is much greater in West Virginia than in Ohio or Pennsylvania.

One of the grossest misuses of natural gas is in the carbon black industry. A considerable proportion of the gas produced in West Virginia is used in that state in the manufacture of carbon black. We insert here the testimony of two witnesses with reference to that condition.

The witness Wallace (Record, page 369), says that the carbon black industry is,

> "An industry in which we all know all the heat units and valuable substance in the gas is absolutely wasted."
>
> "Q. Do you know whether or not there are any number of such carbon black plants in the State of West Virginia and if you do, tell us how many?
>
> A. I can't give you the exact number from memory. I can furnish that for the record, if you want it. About 9 or 10 per cent. of the state's production is misused in carbon black manufacture." (Wyer, p. 903).

The soundness of the Ohio policy rsetricting the use of natural gas to domestic consumers, when the supply is inadequate, and the unsoundness of the policy of permitting this valuable fuel to be used in such wasteful processes as in the manufacture of carbon black, is well

shown by the testimony of the witness, Daly, at page 586 of the record. We here quote his language:

"Q. I wish you would state briefly the advantages, if any, of natural gas for domestic or other purposes, as compared with coal or other fuels?

A. The principal advantage, of course, is in its low cost, as compared with other gaseous fuel, its convenience, its cleanliness, and its advantage, when an adequate supply can be given, to the health of the community, by the ability to keep an even temperature at all times. It is a commodity that might be described as a luxury within the reach of the poor as well as the rich, and has probably contributed more to the comfort of the laboring classes and peocontributed to the comfort of the people. It has also saved a great deal of drudgery in that way, and has contributeed to the comfort of the people. It has also been a great contributory in the way of taxation to the communities. Not only in that way has it saved the community, but in the saving to cities of a large amount of money in the gathering and disposing of ash content. In the city of Cleveland alone, in the year 1917, the East Ohio Gas Company displaced approximately thirteen hundred thousand tons of coal. * * * Then we have charitable institutions and hospitals, where it is almost a necessity. They find it very difficult to get along without some fuel of that kind, and in the smaller communities, the cutting off of natural gas would mean that they would be deprived of all gaseous fuel, for the reason that they are not large enough to maintain an artificial gas plant. Even though the company could furnish gas, the cost would be very excessive in companison with natural gas, and it would be unthinkable to tax the people to the extent necessary to use artificial gas for heating purposes, although they might afford the luxury of it for cooking and water heating."

On this subject the witness, Denning, (at page 677 of the record), testified as follows:

> "Natural gas is the best and most economic and most convenient fuel for all general purposes that has ever been discovered. Its B. T. U. content of heat efficiency is generally from 100 to 150 per cent. more than that of any manufactured gas or any solid fuel. For those reasons and due to the practically unlimited supply in the past, the domestic consumer throughout Ohio, to the number of somewhere between four millions and five millions, have grown to practically depend upon the use of natural gas for all purposes of a general household nature, cooking, in a large measure for lighting, and in a very large measure for heating, particularly for dwellings."

EXTENT OF PROPERTY RIGHTS WHICH WOULD BE AFFECTED BY THE ENFORCEMENT OF THIS STATUTE.

The maps hereinbefore inserted showing the pipe line systems of the various natural gas companies engaged in transporting gas from West Virginia to other states and in transporting gas in and through those other states to the ultimate consumer, show graphically that the property the value of which would be destroyed by the shutting off of the gas now carried by these lines, would be enormous. The equipment of consumers upon all of the lines shown by these maps, would be rendered largely useless, and this would add another large sum to the total of destroyed property values. The testimony of the witness, Wyer, (pages 905 and 906), is to the effect that the property value of gas companies that would be affected by the enforcement of the law in question would

be at least two hundred million dollars. The same witness testified that the readjustment of the appliances and houses of consumers for the use of other fuel would be a loss of at least one hundred dollars on the average for each consumer affected, and this would make an aggregate loss of at least one hundred and twelve million dollars. The testimony of the witness, Daly, (page 588), is that the result of the enforcement of this act would be the practical financial wreckage of The East Ohio Gas Company. It would render the transportation system useless and destroy its value, except its salvage value. The loss would be approximately twenty million dollars.

The testimony of the witness, Denning, (record, page 673), is to the effect that much of the property of The Ohio Fuel Supply Company would be rendered useless by the operation of this act.

The testimony of the witness, Quay, (record, page 47), Corrin (record, page 326), Wallace (record, page 368), Tonkin, (record, page 428), Angle, (record, page 555), McMahon, (record, page 725), Whitcomb, (record, pages 782-783), Anderson, (record, page 828), Wyer, (record, page 909), is to the effect that the service of these gas companies to their consumers would be demoralized by the operation of the act. The deteroriation and loss in value of property which would necessarily follow such a demoralization of service is plain.

WEST VIRGINIA WOULD TAKE SUBSTANTIALLY ALL THE GAS UNDER THE ACT IN QUESTION.

The testimony shows that under the operation of the act, practically the entire supply of gas produced in the State of West Virginia would be, if not immediately, then at a very early date, required for consumers inside the State of West Virginia. We here insert verbatim extracts of the testimony of the complainant's witnesses upon this point:

Quay (The Manufacturers Light & Heat Company, record, page 44):

> "A. If we were called upon to supply natural gas to meet all the requirements of the gas which they may desire to use, in all of the industrial plants, manufacturing companies, in West Virginia, it would require between 25 and 33,000,000 cubic feet per day.
>
> Q. As I understand your answer, that applies only to those industrial plants that are connected with your own lines?
>
> A. Yes."

Wallace, (The United Fuel Gas Company, record, page 369):

> "I feel that in the course of a year or year and a half, the gas would be practically all sold in the State of West Virginia for manufacturing purposes." * * *

Sullivan, (The Hope Natural Gas Co., record, page 214):

> "We have attempted to make an estimate of the increased amount which consumers connected to

our lines and closely tributory thereto, would require to take care of their business, if they were using natural gas for all purposes. And we estimate that that would be in the neighborhood of from sixty to seventy-five million cubic feet per day." * * *

Anderson, (record, pages 824, 825):

"Q. Have you made any computation and estimates of the quantity of gas which the industrial plants in West Virginia would take per year, if they could get a full and continuous supply?

A. I have made two such estimates, based upon the reports of the maximum monthly sales in any one month to domestic and industrial consumers of the twelve largest gas utilities doing business in West Virginia, which reports were made to me in writing by letter. The first show the increased demand per annum in excess of the present sales which the industrial consumers would make upon the utilities by reason of the operation of the act in question amounting to 98,628,380,000 cubic feet; second, showing the increased sales per annum of gas which would be made to industrial consumers under the operation of said act, amounting to 55,017,359,000 cubic feet.

Q. Have you any other estimates of the increased industrial use of gas per annum within the State of West Virginia, by reason of the operation of the act now in controversy?

A. I have made an estimate of such increased use of gas in West Virginia, based upon the curtailment of the supply of gas to industrial consumers, by reason of the increased domestic consumers' demand during the winter months, based upon the actual monthly industrial sales of the nine largest gas utilities operating in the State of West Virginia, Pennsylvania, Ohio and Kentucky.

Q. What amount of increased use of gas per annum does this computation show?

A. It shows 32,959,471,000 cubic feet.

Q. Does this purport to show the entire increase in the industrial demand, which will occur under the operation of the act?

A. It does not; on the contrary, it is believed to be much less than the actual demand would prove to be."

There are many natural gas utilities in West Virginia, (stipulation, pp. 1365-1366; Robinson, 1374-5-6-7-8), supplying the towns and cities of that state, and it is chiefly from industrial concerns in a few of these that the loudest complaints about shortage occur. The glass companies of Morgantown, Fairmont and Clarksburg were largely responsible for the passage of the act, in a self-centered demand that insists on gas for their glass pots throughout the winter, though the supply for their use shall be taken from the homes of Pennsylvania and Ohio families.

The local companies supplying Morgantown, Fairmont and Clarksburg had an inadequate supply from their local wells, though both companies have large areas of undrilled leaseholds, extensive pipe line systems and compressing stations. (Robinson, 1375; Cunningham, 1219). The unique scheme, therefore, was evolved and embodied in the act, **something entirely new in utility regulation** or policy, whereby the local companies should have the right to demand that the interstate companies shall not only take care of their own West Virginia patrons, but shall make good the deficiency upon the lines of any other gas utility before gas may go out of the state. (Cunningham, 1230).

Fairmont and Morgantown also made application to the Public Service Commission of West Virginia to com-

pel the interstate companies to sell to the local companies. (Robinson, 1399).

That the statute in question here had its inception in 1917 in the demand for gas from the industries of West Virginia also appears from the testimony of Governor Cornwell, who testifies, (record, page 1194), that "the matter was first brought to my attention by Mr. Steptoe, who represented manufacturers and other gas consumers at Clarksburg in the northern part of the state." The governor refused, he testifies, (record, page 1195), "to put a provision in the call for the special session in 1917 to deal with this question, for several reasons, but I did lay the matter before the legislature, or called it to the attention of the legislature at the regular biennial session in 1919."

From the paragraph, relating to this subject, in the governor's message to the 1919 session of the West Virginia legislature, we quote, in part, as follows:

> "With the approach of the last winter and the early cold weather there was an acute gas shortage in the central and northern section of the state, **especially for manufacturing purposes**, which led to a demand of me by gas consumers for a special session of the legislature to enact a measure under which the gas companies could be compelled to furnish an adequate supply of gas to West Virginia consumers.
>
> * * * * * * * * * *
>
> I acceded to that request, not only because of the importance of the particular questions therein involved, but because I felt that the graver and more far-reaching question of the powers of the legislature itself, as well as the general regulatory powers of the Public Service Commission were likewise in-

volved, and that they should be settled by the Commission, and if need be by the courts of the land, in order that we might know, once and for all, how far the legislature has gone or how far it can properly go in regulating public service corporations through the Public Service Commission." (Record, page 1196).

In addition to these industries which are using gas from the lines of local utilities but want an additional supply during the peak load time, as well as at all other times, there are many other industries which are not dependent altogether on gas, but are using coal and coke; these constitute an enormous threat against the gas supply in their locality should this act be upheld. For instance, the Weirton Steel Company, Weirton, West Virginia; Wheeling Steel and Iron Company, Wheeling, West Virginia; LaBella Iron Works, Wheeling; Whittaker Glass Company, Wheeling; Follansbee Bros., Wellsburg, West Virginia; Fostoria Glass Company, Moundsville, West Virginia; United States Stamping Company, Moundsville, West Virginia; Homer Laughlin China Company at Newell, West Virginia; Smith and Taylor Company, Chester, West Virginia, are some of these plants which would avail themselves of the benefit of the act and would demand from 25 million to 33 million cubic feet per day. (Quay, 44.) And a large number of other similar plants near the lines of other interstate companies in West Virginia. (Quay, 45.)

Even though, under the act in question, a substantial amount of gas would remain for exportation to other states during the season of minimum demand, yet the

evidence is plain that, during the winter period, the amount would be so small as to render the service insufficient, dangerous and intolerable, and the value of the service and of the property devoted to it would be destroyed as completely as if no gas at all were available for exportation. (Record, pp. 214, 326, 368, 428, 677, 725).

THE TESTIMONY SHOWS THAT THE EFFECT OF THE ENFORCEMENT OF THE STATUTE IN QUESTION WOULD BE AS ALLEGED IN THE BILL OF COMPLAINT OF THE STATE OF OHIO.

The undisputed testimony of the witnesses upon the question of the effect of the act of West Virginia completely supports the allegations made in the bill of complaint of the State of Ohio with reference to that fact. We insert herein the verbatim testimony of the managers of the various companies transporting gas from West Virginia, and distributing such gas in other states:

Quay, (The Manufacturers Light and Heat Company,) record, page 47:

> "If my company was compelled to furnish gas in an amount equal to the possible requirements of all of our customers, connected to our lines in the State of West Virginia—and that would apply to all other companies in the state as well—that it would practically demoralize our business in the States of Pennsylvania and Ohio."

Sullivan, (The Hope Natural Gas Company), record, page 214:

> "If the provisions of this statute were put into effect it would result in such a demoralization of the business as to make it impossible for us to fulfill our obligations under the contracts which we have made with other companies for a supply of gas outside of the State of West Virginia. It would also have the effect of making the service that we could render to those companies so unsatisfactory to their consumers that they would necessarily have to adopt some other means of providing heat in their homes. * * *"

Corrin, (The Hope Natural Gas Company, The Reserve Gas Company, The Connecting Gas Company, The River Gas Company), record, page 326:

> "First, it would be very dangerous. I do not see how it would be possible to operate any gas system of lines if you could not determine the amount of gas that was going to go through those lines and have some person or city, or otherwise, take gas off of the line before it reached your consumers. In addition, you could not retain any of your consumers yourself, because the service that would be rendered would be uncertain and undependable; and, in fact, I don't believe that it would be practicable to maintain a gas company if that condition existed."

Wallace, (The United Fuel Gas Company), record, p. 368:

> "I feel that in a very short time, in cold weather especially, we would have no gas to transport out of the state, and for that reason I do not believe domestic consumers and other people would care to be connected to our lines, if they could only receive a supply of gas during the summer season, and in the winter time, when they absolutely needed the gas

for heating and lighting and comfort, to have the supply discontinued. * * *"

Tonkin, (Peoples Natural Gas Company), record, page 428:

"Well, the result would probably be that on extremely cold days there would be very little, if any, gas come north through the lines connecting with the Hope Company. It would create a situation that would leave us practically without gas, and what little gas we would have left would be scattered around to so many places, and we would have to try to do so much with so little gas, that we wouldn't have any service. It would also create a dangerous situation, where the gas would go out, no doubt, in a number of places. In fact, it would demoralize the operation of the company."

Angle, (Fayette County Gas Company), record, page 555:

"It would, without any question of doubt, put The Fayette County Gas Company out of business."

Daly, (The East Ohio Gas Company), record, page 588:

"The result of such an action, in so far as we are able to anticipate it, would be the wreckage—practical financial wreckage of the company. It would result in depriving many of the communities of gas service of any kind. It would leave our transportation system without any reason or any practical use to which it could be applied. That alone would involve a loss of approximately $20,000,000, less whatever salvage might be obtained from it."

Jones, (The Pure Oil Company), record, page 636:

"The Dayton Gas Company, depending entirely upon its supply from The Logan Natural Gas & Fuel

Company, which company secures the gas from West Virginia, and having no other source of supply, if the gas was cut off entirely, would immediately have to turn to other fuel. If the gas was only partially curtailed the consumers would have to be limited undoubtedly to cooking, heating water, some lighting and perhaps a little auxiliary heating."

Denning, (The Ohio Fuel Supply Company, (record, page 673:

"A very disastrous and destructive effect upon both, of course more or less dependent upon the quantity of gas diverted. A substantial quantity diverted would have the immediate effect of disorganizing and disarranging the service to the consumers throughout the state, make necessary the entire elimination of service from a considerable number of consumers, a complete rearrangement of lines, compressing stations and operating conditions of the company and undoubtedly deprive a considerable portion of the people served by the company, of gas service, thereby destroying the investment which they have in appliances, and also result in a destruction of a considerable portion of the company's property, by reason of the fact that it would no longer be of any value or use in the company's operations, and would not have any value whatsoever, except what might be possibly obtained from a resale or junk or a salvage value. It would necessitate—I think I have already said—a complete elimination or discontinuance of service to a considerable number of consumers."

"Q. Do you mean by that a considerable number of municipalities?

A. Yes; for instance, for illustration, take the city of Columbus—

Q. That is the capital of the state?

A. The capital of the state, yes; we rely almost entirely upon the volume of gas produced in West Virginia and transported through the West Virginia

18-inch line, to supply Columbus. If that were diverted or were to cease, Columbus would be, I may say, almost without gas service entirely."

McMahon, (The Northwestern Ohio Natural Gas Company), record, page 725:

"If the Northwestern was to be deprived, through the legislative acts of another state, or if the Hope Company were only able to deliver us a smaller quantity or a less quantity of gas than they are at present delivering us, it would cause us great hardship in the communities we serve. If that was very extensive it would cause, during the winter months, almost a total cessation of the supply of gas to our consumers, and would cause irreparable damage to the people that we serve, and would be detrimental to their health and dangerous to their property. * * * The company would be financially ruined."

Whitcomb, (The Union Natural Gas Corporation, The Logan Natural Gas and Fuel Company, and other subsidiary companies, (record, pages 782-783):

"It would ruin and demoralize the service in our entire southern division, with the exception of the two and a quarter million feet of gas available in local fields. There would be absolutely no gas whatever passing through the line west of Sugar Grove compressing station supplying the city of Dayton the city of Muncie, Richmond, New Castle and other cities and towns in Ohio and Indiana. We would have no service whatever, or no supply to deliver to the city of Lancaster, in Fairfield county. * * * "

James H. Reed, former president of the Philadelphia Company, says, (page 526):

"Under the operation of the West Virginia statute, even eliminating from consideration the in-

creased industrial consumption in West Virginia, there would be enough gas taken out of the lines by increasing the domestic consumption and by making other connections to very seriousiy cripple the service to Pennsylvania and Ohio consumers on cold days."

Anderson, (expert witness), record, page 828:

"The chief effect upon the large utilities would be to disorganize their operations because of changing the direction and amounts of gas from those for which their plants were designed to meet demands which were unforseen and which, being caused by the deficiency in supply of gas produced by small local companies, would come at times of greatest demand upon their own consumers, this great deficiency in supply to the consumers in other states during extreme cold weather would cause great distress and suffering and be attended with danger of possible death from asphyxiation."

Wyer, (expert witness), record, page 909:

"Q. What would be the effect of making physical connection in West Virginia between those interstate lines and local lines or communities, as is provided for in the statute now under discussion, as to the service on the lines of such interstate companies?

A. The immediate practical effect of making such connections would be to demoralize in all cases, and in many instances destroy entirely, the interstate service for natural gas transmission, in towns outside of West Virginia."

CONCLUSION OF STATEMENT OF THE CASE.

The proofs taken, and hereinbefore reviewed, show that the effect of the enforcement of the act in question herein would be to compel the gas companies engaged in transporting gas from West Virginia in interstate commerce to divert immediately a considerable proportion of the gas now being transported in interstate commerce and furnish it to applicants inside the state; that within a comparatively short period the increased demand for gas for industrial consumption inside the State of West Virginia, which increase would be the natural consequence of the preference created by the act in question, would require all of the gas produced in West Virginia, leaving none for exportation interstate; that the diversion to intrastate uses of any considerable proportion of the amount of gas now being transported interstate, would, during the cold weather months, demoralize the gas service in the plaintiff state and other states and render it dangerous and intolerable; the consequence of this would be that provision for other fuel would have to be made, and the consumers would lose their gas supply and the value of their appliances adapted to natural gas; the companies and municipalities transporting and distributing the gas would lose the larger portion of the value of their investments; that natural gas is the ideal fuel for domestic purposes, and that this fact has been recognized by the gas companies and governmental authorities of the State of Ohio by giv-

ing the preference in all cases to domestic consumers; that the contract and property rights of these domestic consumers, as well as those of the plaintiff state and of its subdivisions, would be impaired and destroyed by the operation of the act in question.

We proceed now to the discussion of whether or not the State of West Virginia has the power, under our constitutional limitations, to impose these consequences upon the plaintiff state and her citizens and residents.

LEGAL ARGUMENT.

I.

THIS CASE IS PROPERLY BROUGHT IN THE ORIGINAL JURISDICTION OF THIS COURT.

The allegations made by the pleadings and the facts as shown by the proofs in this case clearly bring it within the original jurisdiction of this court, as that jurisdiction has been defined in the cases.

In the case of Kansas v. Colorado, 185 U. S., 125, this question was fully discussed by Mr. Chief Justice Fuller in an able opinion in which he held that, undoubtedly, the constitution made some things justiciable which were not known as such at the common law and that, as the remedies ordinarily resorted to by independent states for the determination of controversies raised by collision between them were withdrawn from the states by the constitution, a wide range of matters susceptible of adjustment, and not purely political in their nature, were made justiciable by that instrument. He referred to the case of Missouri v. Illinois, 180 U. S., 208, in which it was held that the State of Missouri had a right to sue in this court to protect the health and comfort of her citizens which were threatened by the act of the state of Illinois in introducing large quantities of sewage into the waters of a river upon which the state of Missouri depended for her water supply. He held that the mere fact that a state

had no pecuniary interest in the controversy would not defeat the original jurisdiction of this court which might be invoked by the state as **parens patriae**, trustee, guardian or representative of all, or a considerable portion, of its citizens. The learned justice stated that, when one of our states complains of the infliction of a wrong by another state this court has the constitutional jurisdiction to ascertain the existence of the cause of complaint and to adjust the matter, if the complaint be well founded, since the states of the Union cannot make war upon each other nor make reprisal upon each other by embargo nor enter upon diplomatic relations and make treaties. He asserted the power of the court to sit, upon occasion, as an international tribunal and to apply international law if the exigencies of the particular case should so demand.

Again, in the case of Georgia vs. Tennessee Copper Company, 206 U. S., 230, Mr. Justice Holmes, delivering the opinion, used the following language:

> "The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow citizens as a ground for equitable relief are wanting here. The state owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a state for an injury to it in its capacity of quasi-sovereign. In that capacity the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests, and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power. The alleged

damage to the state as a private owner is merely a makeweight, and we may lay on one side the dispute as to whether the destruction of forests has led to the gullying of its roads."

The rule of these cases is readily applicable to the facts of the instant case. The court took this view in passing upon the application for leave to file, and, since the proofs taken clearly support all the material allegations in the bill of complaint, the action of the court in thus taking jurisdiction of the case was clearly right.

II.

NATURAL GAS IS PRIVATELY OWNED, AND IS NOT THE PROPERTY OF THE STATE, WHICH THE STATE MAY REFUSE TO PERMIT TO BE TRANSPORTED OUTSIDE THE STATE.

The claim may be made that natural gas is comparable with wild game and naturally flowing water, which have been held to be the property of no one until reduced to possession, and as to which, therefore, the state may impose terms upon the privilege of reducing them to possession. See Geer vs. Connecticut, 161 U. S., 519; Hudson City Water Co. vs. McCarter, 209 U. S., 349.

This claim, if made, is completely answered by the statement that such is not the law of West Virginia, as is shown by repeated decisions of their Supreme Court of Appeals, to which we now refer.

In the case of Williamson vs. Jones, 39 W. Va., 231,

Holt, J., speaking for the Supreme Court of Appeals of that state, said:

> "We are met at the threshold by the contention on the part of defendant Jones that, no matter who may be the rightful owner of the land, petroleum—mineral oil—so far from being a part of the inheritance, something of which waste can be committed, is only capable of the qualified ownership of belonging to him who first appropriates it, no matter where it may be situated. Whatever the earlier decisions in other states may have been, it has never been so held in this state; and the authorities now very generally—universally, so far as I have examined them—hold petroleum to be a mineral, and as much a part of the realty as timber, coal, or iron ore, except that in proper cases its mobility as a subterranean liquid must be taken into consideration as in the case of salt water, etc. * * * Oil is a mineral and, being a mineral, is part of the realty. Funk vs. Haldeman, 53 Pa. St., 229. In this it is like coal or any other natural product which in **situ** forms part of the land."

This case came again before the Supreme Court of Appeals of West Virginia, (43 W. Va., 562), where, Brannon, J., speaking for the court, said:

> "Petroleum oil in its place in the land is a part of the land itself, just as are ore, coal, timber and iron."

This question again came before the Supreme Court of Appeals of West Virginia in Wilson vs. Youst, 43 W. Va., 826, and the court in an opinion in which it examined the authorities at considerable length, held to its former opinion.

Later, in the case of South Penn Oil Company vs. Mc-

Intire, 44 W. Va., 296, the court reaffirmed the doctrine laid down in Wilson vs. Youst, supra, and cited again the language given from Stoughton's Appeal, 88 Pa. St., 198. Still later, in the case of Carter vs. Tyler County Court, 45 W. Va., 806, a case arising over the right to tax oil and gas leases, the Supreme Court of West Virginia said:

> "While the oil remains in the cavities of the rocks **in situ**, this court has held in Wilson vs. Youst, (43 W. Va., 826), and Williamson vs. Jones, (39 W. Va., 231), that it is part of the realty. The lessee may drill the well to the sand or rock in which the oil is contained, but the oil does not change its character from realty to personalty, or any portion of its ownership until it is brought to the surface, and then seven-eighths of it becomes the property of the lessee."

Still later, in the case of Preston vs. White, 57 W. Va., 278, the same court, through Brannon, P. J., held to the same effect.

These West Virginia decisions, which stand unreversed, absolutely conclude argument as to the nature of the ownership of natural gas in that state. The West Virginia view is in full accord with the decisions of this court.

In Brown vs. Spillman, 155 U. S., 665, 669, Mr. Justice Shires said:

> "Petroleum gas and oil are substances of a peculiar character, and decisions in ordinary cases of mining, for coal and other minerals which have a fixed **situs**, can not be applied to contracts concerning them without some qualifications. **They belong to the owner of the land, and are a part of it**, so long as they are on it or in it, or subject to his control,

> but when they escape and go into other land, or come under another's control, the title of the former owner is gone. If an adjoining owner drills his own land and taps a deposit of oil or gas, extending under his neighbor's field, so that it comes into his well, it becomes his property. Brown vs. Vandergrift, 80 Penn. St., 142, 147; Westmoreland Nat. Gas Co.'s Appeal, 25 Weekly Notes of Cases, (Penn.), 103."

The nature of the land owner's property in natural gas, and the distinction between the cases involving on the one hand things which are owned by no one, such as wild animals and flowing water, and, on the other hand, things which are the subjects of private ownership, has not anywhere been better stated than by the late Chief Justice White in the case of Ohio Oil Company vs. Indiana, 177 U. S., 190, 208, 210.

This court upheld the constitutionality of the statute of the State of Indiana prohibiting the owner of any natural gas or oil well to permit the gas or oil to escape and waste for a longer period than two days after gas or oil had been struck in the well. In the opinion Mr. Justice White said:

> "If the analogy between animals **ferae naturae** and mineral deposits of oil and gas, stated by the Pennsylvania court and adopted by the Indiana court, instead of simply establishing a similarity of relation, proved the identity of the two things, there would be an end of the case. This follows because things which are **ferae naturae** belong to the 'negatime community.' In other words, are public things subject to the absolute control of the state, which, although it allows them to be reduced to possession, may at its will not only regulate but wholly forbid their future taking. Geer vs. Connecticut, 161 U. S.,

519, 525. But whilst there is an analogy between animals **ferae naturae** and the moving deposits of oil and natural gas, there is not identity between them. Thus, the owner of land has the exclusive right on his property to reduce the game there found to possession, just as the owner of the soil has the exclusive right to reduce to possession the deposits of natural gas and oil found beneath the surface of his land. The owner of the soil can not follow game when it passes from his property; so, also, the owner may not follow the natural gas when it shifts from beneath his own to the property of some one else within the gas field. It being true as to both animals **ferae naturae** and gas a[illegible] oil, therefore, that whilst the right to appropriate [illegible]d become the owner exists, proprietorship does not take being until the particular subjects of the right become property by being reduced to actual possession. The identity, however, is for many reasons wanting. In things **ferae naturae** all are endowed with the power of seeking to reduce a portion of the public property to the domain of private ownership by reducing them to possession. **In the case of natural gas and oil no such right exists in the public. It is vested only in the owners in fee of the surface of the earth** within the area of the gas field. This difference points at once to the distinction between the power which the lawmaker may exercise as to the two. In the one, as the public are the owners, every one may be absolutely prevented from seeking to reduce to possession. No divesting of private property, under such a condition, can be conceived because the public are the owners, but the enacting by the state of a law as to the public ownership is but the discharge of the governmental trust resting in the state as to property of that character. Geer vs. Connecticut, supra. On the other hand, as to gas and oil, the **surface proprietors** within the gas field all have the right to reduce to possession the gas and oil beneath. They **could not be absolutely deprived of this right which belongs to them without a taking of private**

> **property.** * * * Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the State of Indiana which is here attacked because it is asserted that it devested private property without due compensation, in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others."

The above was approved, and much of the language of Mr. Justice White was quoted in the opinion of this court in the case of West vs. Kansas Natural Gas Co., 221 U. S., 229. Every court in which the question has arisen has taken a similar view. The following text writers confirm our statements. Thornton on Oil and Gas, Sections 18, 19, 20; White on Mines and Mining Remedies, Section 162, p. 223; Snyder on Mines, Section 1170, p. 954.

Since the question has been directly determined by the Supreme Court of Appeals of West Virginia, and by this court, we shall not trouble the court with the further authorities, which are numerous and uniform.

The distinction between the case at bar and the case of Hudson Water Company v. McCarter, 209 U. S., 349, in which this court held that the State of New Jersey might, by valid enactment, forbid the transportation of the water of a river flowing within the State of New Jersey, for consumption in a city in another state, is as obvious as the distinction made by Mr. Justice White in the case of Ohio Oil Company vs. Indiana, supra, between the rights of the state in wild game and natural gas. The language of the court in the Hudson water case itself

distinguishes this case from that. Mr. Justice Holmes said at page 356 of that case:

> "It is fundamental, and we are of opinion that the private property of riparian proprietors can not be supposed to have deeper roots."

But the private property in natural gas has been held by all courts to be as deeply rooted as that in any other property. The statute in question here does not seek to limit the right of owners to take gas from the earth. It fully permits the complete reduction of the gas to private ownership and possession, but it only seeks to limit the right of the private owner and possessor to transport the gas in interstate commerce. Certainly natural gas, lawfully taken from the earth and placed in containers, and for decades recognized as a proper subject of interstate transportation, and always held to be, even when in place in the earth, the subject of private ownership and possession, can be no more properly brought within the rule of the Hudson Water Company case than can oil or coal or iron or copper or any other natural resource. It will hardly be contended that the right of the owner of coal or iron or oil to raise and deal with this property can be qualified by the state by limiting that right to the use of it inside the state. The difference between these cases and those of wild animals and flowing water is that the state is the owner, if it chooses to be so, of the wild animals and flowing water, since they have no private owner, and hence may transfer that ownership upon terms fixed by itself. The state is nowhere, certainly not in West Virginia, thought to be the owner of coal, or oil or gas in

place, hence there is no opportunity to attach conditions upon the acquisition of title. The state can control the use, within the limits of its police power, but it can not, by the exercise of this power, prevent interstate commerce. The language of Mr. Justice Holmes at page 357 of the opinion in Hudson Water Co. vs. McCarter, 209 U. S., 349:

> "It finds itself in possession of a great public good. What it has it may keep, and give no one a reason for its will,"

can not be made applicable, since the state has it not, unless we are prepared to say that the state has all things which are within its borders and may prevent their exportation,

> "And give no one a reason for its will."

No one would claim this to be the law.

In the case of West vs. The Kansas Natural Gas Company, 221 U. S., 229, Mr. Justice McKenna, delivering the opinion of the court, said, at page 259, in distinguishing the case of Hudson Water Co. vs. McCarter, supra:

> "That principle was that the 'interest of the public of a state to maintain the rivers that are wholly within it substantially undiminished, except by such drafts upon them as the guardian of the public welfare may permit for the purpose of turning them to a more perfect use.' And this principle was emphasized as the one determining the case, and the opinion expressed that it was 'quite beyond any rational view of riparian rights that an agreement of no matter what private owners could sanction the diversion of an important stream outside the boundaries of the state in which it flows. The private right to appropriate is subject not only to the rights of land owners, but to the initial limitation that it

may not substantially diminish one of the great foundations of public welfare and health.'

It is hardly necessary to say that there was no purpose in the case to take from property its uses and commercial rights, or to assimilate a flowing river and the welfare which was interested in its preservation to the regulation of gas wells, or to take from the gas when reduced to possession the attributes of property decided to belong to it in Ohio Oil Co. v. Indiana, and recognized in Lindsley v. Natural Carbonic Gas Co. Indeed, pains were taken to put out of consideration a material measure of the benefits of a great river to a state. And surely we need not pause to point out the difference between such a river, flowing upon the surface of the earth, and such a substance as gas, seeping invisible through sands beneath the surface."

There is nothing, then, in the character of natural gas, which permits it to be considered as a thing apart, and to be placed, together with its owners and those who desire to consume it, outside the protection of the commerce clause of the constitution.

III.

NATURAL GAS WHEN REDUCED TO POSSESSION IS A COMMODITY WHICH BELONGS TO THE OWNER OF THE LAND, AND MAY BE THE SUBJECT OF BOTH INTRASTATE AND INTERSTATE COMMERCE.

Extended argument upon this point is rendered unnecessary by the statement made in division X. on page 36 of the answer of the defendant, which we here quote:

"While this defendant admits that gas is or may be an article of interstate commerce, yet this defend-

ant denies that gas placed in mains or pipes by public service gas companies, is either in interstate commerce or a legitimate article of interstate commerce, unless and until it has reached the point where it is no longer subject to the public service in West Virginia, and the duties imposed by law upon public service gas companies have been observed and performed by them; and denies that the requirement of the performance or observance of the duties owed by such companies is an interference with interstate commerce or a burden thereon."

In the case of West v. Kansas Natural Gas Co., 221 U. S., 229, supra, the first paragraph of the syllabus is as follows:

"Natural gas when reduced to possession is a commodity which belongs to the owner of the land and may be the subject of both intrastate and interstate commerce."

The opinion of the court in that case reviews the authorities upon this question, calling attention especially to the Indiana cases of State ex rel. Corwin v. Indiana & Ohio Oil, Gas & Min. Co., 120 Ind., 575, 6 L. R. A., 579, 2 Inters. Com. Reps., 758, 22 N. E., 776; Manufacturers Gas and Oil Co. v. Indiana Natural Gas & Oil Co., 155 Ind., 545, 53 L. R. A., 134, 58 N. E., 706, 21 Mor. Min. Rep., 102, and Jamieson v. Indiana Natural Gas & Oil Co., 128 Ind., 555, 12 L. R. A., 652, 3 Inters. Com. Rep., 613, 28 N. E., 76, which the court in the West case discusses at pages 256-258 of 221 U. S. Reports. The view of the first Indiana case, State v. Indiana, etc., Co., 120 Ind., 575, **supra,** had been earlier approved by this court in the case of Ohio Oil Co. v. Indiana, 177 U. S., 190,

where this court in an opinion by Mr. Justice White approved the same, saying:

> "In State v. Indiana, Etc., Co., 128 Ind., 575, a law of the State of Indiana which made it unlawful for any person to conduct natural gas beyond the state, and imposing penalties for so doing, was assailed as unconstitutional because repugnant to the commerce clause of the Constitution of the United States. The court held the statute to be void for the asserted clause. The property in natural gas when reduced to actual possession was decided to be like any other property, and therefore the subject of commerce, and within the protection of the Constitution of the United States."

In Haskell v. Kansas Natural Gas Co., 224 U. S., 217, (1912), this court, in refusing to modify the decree in the case of West v. Kansas Natural Gas Co., **supra**, said:

> "The original proceeding was brought to enjoin the officers of the State of Oklahoma from preventing the carriage in interstate commerce beyond the lines of the state of natural gas which had been severed from the earth by the owners of such gas, and particularly to enjoin enforcement of a certain statute of the state passed in 1907 * * * This court held that natural gas after severance is a commodity which might be dealt in like other products of the earth, as coal and other minerals, and is a legitimate subject of interstate commerce; and that no state by such laws as were involved in the case can prohibit its transportation in interstate commere beyond the lines of that state * * *. (Page 228.)
>
> "As we have said, this court in its decision affirmed the right of the complainants in the conduct of interstate commerce, to take natural gas out of the state and declared that a state could not prohibit the transportation of such product beyond its bor-

> ders and that the legislative act in question was an act the main purpose and effect of which were to prohibit the exercise of lawful rights secured by the federal constitution."

In Pennsylvania Gas Company v. Public Service Commission of New York, 252 U. S., 23, (1920), this court, affirming the decision of the New York Court of Appeals, 225 N. Y., 397, said:

> "We think that the transmission and sale of natural gas produced in one state, transported by means of pipe lines and directly furnished to consumers in another state is interstate commerce within the principles of the cases already determined by this court. West v. Kansas Natural Gas Co., 221 U. S., 229; Haskell v. Kansas Natural Gas Co., 224 U. S., 217; Western Union Telegraph Co. vs. Foster, 247 U. S., 105. * * *
>
> "In the instant case the gas is transmitted directly from the source of supply in Pennsylvania to the consumers in the cities and towns of New York and Pennsylvania, above mentioned. Its transmission is direct, and without intervention of any sort between the seller and the buyer. The transmission is continuous and single, and is, in our opinion, a transmission in interstate commerce, and therefore subject to applicable constitutional limitations which govern the states in dealing with matters of the character of the one now before us."

In the case of Landon, Receiver, v. Public Utilities Commission of Kansas, 242 Fed., 658, the court said:

> "Reverting to the character of the business transacted by the receiver, it is to be noted, (a) that the shipment is started on its journey from one state to another; (b) with the purpose it shall be delivered to a consumer; (c) that it moves continuously from

a point of shipment in one state to the consumer in another state; (d) that it is moved part of the way in the pipe lines of the distributing company, whether as agent of the receiver or as connecting carrier is immaterial; (e) the destination of the shipment is intended at the time of the shipment to be beyond the state, although the name of the particular consumer for any specific portion of the gas shipped is not known; (f) there is no stoppage in transportation; (g) the title to the gas remains in the receiver until delivery to the ultimate consumer.

"In substance and effect there are continuing orders by the consumers to the receiver through the distributing company to supply them with gas from the Oklahoma fields. Such transactions have the character of interstate commerce at their inception and this character continues until final delivery. Crenshaw v. Arkansas, 227 U. S., 389, * * * and cases cited. Even though the shipment is started before a definite order for a specific amount is given, still the continuous and usual course of business determines the character of the shipment. Swift & Co. v. United States, 196 U. S., 375, * * *; Grand Union Tea Co. v. Evans, (D. C.), 216 Fed., 79."

This court, in Public Utilities Commission vs. Landon, 249 U. S., 236, reversed the decision of the Circuit Court of Appeals last cited upon the ground that the interstate character of the transportation ceased upon the sale and delivery of the natural gas to the local distributing companies in the city and state where the gas was to be consumed. This court, in that case, said, however:

"That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state. Ameri-

> can Express Co. v. Iowa, 196 U. S., 133, 143; Oklahoma v. Kansas Natural Gas Co., 221 U. S., 229; Haskell v. Kansas Natural Gas Co., 224 U. S., 217, * * *. See also Haskell vs. Cowham, 187 Fed., 403."

The same question came before the Court of Chancery of New Jersey in the case of Benedict v. Columbus Construction Company, 49 N. J. Eq., 23, and was similarly decided. See to the same effect Cooley on Constitutional Limitations, 7 ed., 858; Prentice & Egan, on the Commerce Clause of the Federal Constitution, 195.

Every court, then, which has passed upon this matter has determined that natural gas is a commercial commodity and that its transportation in pipe lines, which is the only practicable method of transporting it, is, if those lines cross state boundaries, interstate commerce. The statement of the defendant state, then, on page 36 of its answer, as follows:

> "Yet this defendant denies that gas placed in mains or pipes by public service gas companies is either in interstate commerce or a legitimate article of interstate commerce, unless and until it has reached the point where it is no longer subject to the public service in West Virginia, and the duties imposed by law upon public service gas companies have been observed and performed by them,"

is so completely contrary to the established law upon the subject that one would desire to wait until counsel for the defendant had suggested some legal reason for this striking proposition before making an argument upon the subject. At this point, however, the statement seems to be simply wrong. If gas is a commodity and as such is a proper subject of interstate commerce, then it must

follow that the law of West Virginia, made either by statute or judicial decision, and whether it purports to be an exercise of police power or not, can not convert a physical commodity, which has always been held to be a subject of interstate commerce, and which is still moving, or which persons still desire to move, across state lines, into a thing which is not a legitimate article of interstate commerce. Western Union Telegraph Co. vs. Foster, 247 U. S., 105; Western Union Telegraph Co. vs. Pendleton, 122 U. S., 347, 359; Leisy vs. Hardin, 135 U. S., 100; Savage vs. Jones, 225 U. S., 501; Western Union Telegraph Co. vs. Brown, 234 U. S., 542, 547; Vandalia Coal Co. vs. Commission, 268 Fed., 572.

IV.

THE ACT IN QUESTION CONSTITUTES A REGULATION OF INTERSTATE COMMERCE.

(a) Purpose of the Commerce Clause.

One of the principal contentions of the complainant in this case is that the act of the State of West Virginia, in question here, is unconstitutional because it is in violation of Clause 3 of Section 8 of Article I of the Constitution of the United States, the so-called "commerce clause." It becomes pertinent, therefore, to refer briefly to the historical background of the commerce clause, and the history of its adoption and interpretation.

The causes leading to the adoption of the Commerce Clause were well stated by Mr. Justice Johnson of this

court in his concurring opinion in the case of Gibbons v. Ogden, 9 Wheaton, 1, in which opinion he stated that, upon the return of peace following the War of the Revolution, the sympathies which had bound the states together during the period of the war dissolved and the states, finding themselves in full control over their own commerce, enacted iniquitous laws and impolitic measures from which grew up a conflict of commercial relations destructive of the domestic harmony of the states and fatal to their commercial interests abroad. He stated that this commercial anarchy was the immediate cause that lead to the Constitutional Convention and that the adoption of the Commerce Clause was recognized at the time as removing from the states the power to enforce these conflicting commercial regulations, as proved by the fact that such regulations, which existed by statute in every state, were permitted to drop lifeless without even the formality of a repeal.

Chief Justice Marshall, in the case of Brown vs. Maryland, 12 Wheaton, 419, said:

> "The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests; and our disunited efforts to counteract their restrictions were rendered impotent by want of combinations. Congress, indeed, possessed the power of making treaties; but the inability of the federal government to enforce them had become so apparent as to render that power in a great degree useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations,

perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the federal government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the states. To construe the power so as to impair its efficacy would tend to defeat an object, in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity. What then is the just extent of a power to regulate commerce with foreign nations, and among the several states? This question was considered in the case of Gibbons v. Ogden, (9 Wheat. Rep., 1), in which it was declared to be complete in itself, and to acknowledge no limitations other than are prescribed by the constitution. The power is co-extensive with the subject on which it acts, and can not be stopped at the external boundary of a state, but must enter its interior."

In the case of Cook v. Pennsylvania, 97 U. S., 574, this court reviewed the history of the constitutional convention with particular reference to the interstate commerce clause, and stated in its opinion that:

"A careful reader of the history of the times which immediately preceded the assembling of the convention which framed the American constitution can not fail to discover that the need of some equitable and just regulation of commerce was among the most influential causes which led to its meeting."

And still later in Lehigh Valley Co. v. Pennsylvania, 145 U. S., 192, Mr. Chief Justice Fuller said:

> "The conflict between the commercial regulations of the several states was destructive to their harmony and fatal to their commercial interest abroad, and this was the mischief intended to be obviated by the grant to the congress of the power to regulate commerce with foreign nations and among the states."

And in Cook vs. Marshall County, 196 U. S., 261, Mr. Justice Brown said:

> "The power of congress to regulate commerce among the states is perhaps the most benign gift of the constitution. Indeed, it may be said that without it the constitution would not have been adopted. One of the chief evils of the confederation was the power exercised by the commercial states of exacting duties upon the importion of goods destined for the interior of the country or for other states. The vast territory to the west of the Alleghanies had not yet been developed or subdivided into states, but the evil had already become so flagrant that it threatened an utter dissolution of the confederacy. The article was adopted that all of the states of the Union might have the benefit of the duties collected at the maritime ports, and to relieve them from the embarrassing restrictions imposed upon the internal commerce of the country."

In his dissenting opinion in the case of Austin vs. Tennessee, 179 U. S., 343, Mr. Justice Brewer said:

> "Second only to the power 'to collect taxes' and 'to borrow money' is the power given to congress by Section 8, Article 1 of the constitution 'to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.' Thus next in order, as though next in importance to the

power of maintaining itself by taxation and borrowing money, is the power to regulate commerce between the states, as well as between the United States and foreign nations."

(b) The Early Judicial Decisions Interpreting the Commerce Clause.

Not until 1824 was there any important judicial determination bearing upon the commerce clause of the constitution. In that year the well known case of Gibbons vs. Ogden, 9 Wheaton, 1, 6 L. Ed., 23, involving the question of the right of the New York legislature to grant an exclusive right of navigation of the waters within the jurisdiction of the State of New York with boats propelled by fire or steam, was decided. In that case this court unanimously reversed the New York court and held the act of the legislature of New York to be void because in conflict with the federal constitution. The principles there laid down by Chief Justice Marshall, speaking for the court, formed the foundation upon which the whole structure of judicial determination with reference to the commerce clause has been built. In that case commerce was defined as being a more general term than traffic, and as including intercourse between nations and states, and comprising every form of commercial relation between the various states.

"It (commerce) described the commercial intercourse between nations and parts of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse."

This decision frankly recognized that the power does not extend to commerce conducted **entirely within the states,** but asserted that the protection of the commerce clause does not halt at state lines, when applied to foreign and interstate intercourse; that the control of Congress over interstate commerce is absolute and knows no limitation. It was, on the other hand, recognized that such legislation as quarantine laws, health laws and inspection laws, being in the general description of police powers, still belong to the states, even though they might indirectly affect interstate commerce. The question of whether the jurisdiction of the Congress over interstate commerce was so complete that, even in the absence of action by congress, the states could not in any way regulate it, was not decided, although the point was strenuously argued by distinguished counsel. Chief Justice Marshall said, however:

> "It has been contended by the counsel for the appellant, that as the word to 'regulate' implies in its nature full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were as well as to those which are altered. **It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated.** There is great force in this argument, and the court is not satisfied that it has been refuted." (Bold type ours.)

Mr. Justice Johnson, in his concurring opinion in that case, said that the power to regulate foreign commerce

is necessarily exclusive in the federal government since the states are entirely unknown to foreign nations and that, since the language which grants the power over interstate commerce is the same as that which grants the power as to foreign commerce, the power over interstate commerce is also necessarily exclusive.

This point, left undecided in Gibbons vs. Ogden, has been the basis of much of the later litigation involving the commerce clause.

In the case of Brown vs. Maryland, 12 Wheaton, 419, (1827), this court said, although the statement was not required for the decision:

> "The power claimed by the state (the power to impose a license tax upon importers for the privilege of selling goods), is in its nature in conflict with that given to congress."

The case was, however, put expressly upon the ground that congress had expressly authorized importation by imposing a duty upon the article in question, and that hence the statute of Maryland was in conflict with the act of congress and not merely with the general power of congress given it by the commerce clause.

In the case of New York vs. Miln, 11 Peters, 102, the court refused to pass upon the question of whether the mere constitutional grant of the power to congress was, in the absence of action by Congress, exclusive of state action, although the subject was fully argued. The court was said to have been hopelessly divided upon this question. See the statement of Mr. Justice Wayne, 7 Howard, at 423 (the passenger cases).

In Pierce vs. New Hampshire, 5 Howard, 504, (one of the license cases, 1846), this question, which had been reserved in the preceding cases, came squarely before the court for decision. Here again the court was divided, but Mr. Justice Woodbury, for the first time, enunciated the rule which has since become well established. He said, substantially, that, with regard to a regulation which reaches all of the states, the power over commerce, "must, of course, be exclusive," but that there are many local matters concerning which the concurrent and auxiliary actions of the states is permissible. At page 624 of 5 Howard, he said:

> "There is much in connection with foreign commerce which is local within each state, convenient for its regulation and useful to the public, to be acted on by each till the power is abused or some course is taken by congress conflicting with it. Such are the deposit of ballast in harbors, the extension of wharves into tide water, the supervision of the anchorage of ships, the removal of obstructions, the allowance of bridges with suitable draws, and various other matters that need not be enumerated, beside the exercise of numerous police and health powers, which are also by many claimed upon different grounds."

The question was next raised in the Passenger Cases, 7 How., 282, and again Mr. Justice Woodbury, in his dissenting opinion, adhere to the views stated by him in the License Cases and said that, as to "matters of exterior, general and uniform cognizance" the power of congress may be exclusive, and as to such matters the silence of congress is to be respected and obeyed as much as its

action, that in other cases, such as affected any mere local or subordinate matter within the limits of a state, the silence of Congress is rather an invitation for the states to legislate upon it.

In the well known case of Cooley vs. Port Wardens, 12 Howard, 310, the view stated by Mr. Justice Woodbury in the license and passenger cases, was at last made the ground of the decision. Mr. Justice Curtis, in delivering the opinion of the court, said:

> "The diversities of opinion, therefore, which have existed on this subject have arisen from the different views taken of the nature of this power. But when the nature of a power like this is spoken of, when it is said that the nature of the power requires that it should be exercised exclusively by congress, it must be intended to refer to the subjects of that power, and to say they are of such a nature as to require exclusive legislation by congress. Now, the power to regulate commerce, embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively demanding that diversity, which alone can meet the local necessities of navigation. Either absolutely to affirm, or deny that the nature of this power requires exclusive legislation by congress, is to lose sight of the nature of the subjects of this power, and to assert concerning all of them what is really applicable but to a part."

This decision is now the established rule. It is, in substance, that the states may exercise powers as to merely local matters, which exercise may have full operation until it is circumscribed by congressional action. In such

cases the inaction of Congress is to be taken as an indication that, until congressional action, the states may freely deal with such local matters. However, in matters admitting or requiring uniform regulation throughout the country or affecting states other than the one which is assuming to legislate, the inaction of congress is to be taken as a declaration of its will that commerce shall be "free and unrestricted."

(c) Develcpment of the Rule of Cooley vs. Port Wardens. Cases in Which the Power of Congress is Exclusive.

The authoritative statement of the rule in the case of Cooley vs. Port Wardens, supra, still left much opportunity for dispute as to the "nature of the subjects of this power," and the litigation since that time has largely centered upon the proper classification of the power sought to be exercised, and the determination whether it was one which required uniformity of rule, or one which admitted diversity of rule. A helpful statement of the rule was made by Mr. Justice Brown in the case of Covington, etc., Bridge Co. vs. Kentucky, 154 U. S., 204, where he said:

> "The adjudication of this court with respect to the power of the states over the general subject of commerce are divisible into three classes: First, those in which the power of the state is exclusive; second, those in which the states may act in the absence of legislation by congress; third, those in which the action of congress is exclusive and the states cannot interfere at all."

The third class of cases, under the rule of Covington Bridge Company vs. Kentucky, supra, embraces "those in which the action of Congress is exclusive and the states cannot interfere at all." It is fairly obvious that the word "action" as used in the quoted clause, means "power," for the **inaction** of Congress, within this class of cases has always been held to be just as effective as its action.

There are many adjudication of this court which place certain cases definitely inside this third class, where "the states cannot interfere."

In the case of Welton vs. State of Missouri, 91 U. S., 275, 279, the constitutionality of a statute of Missouri, which imposed a license tax upon persons who sold goods which were the "growth," "product" or "manufacture" of another state was attacked. No license was required for selling similar goods which were produced within the state. The Supreme Court held that this statute was in conflict with the power of Congress to regulate interstate commerce. In the opinion Mr. Justice Field said:

> "It will not be denied that that portion of commerce with foreign countries and between the states **which consists in the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation.** The very object of investing this power in the general government was to insure this uniformity against discriminating state legislation. * * *
>
> The power which insures uniformity of commercial regulation must cover the property which is transported as an article of commerce from hostile or interfering legislation, **until it has mingled with and**

become a part of the general property of the country, and subjected like it to similar protection, and to no greater burdens. If, at any time before it has thus **become incorporated into the mass of property of the state or nation,** it can be subjected to any restrictions by state legislation, the object of investing the control in the congress may be entirely defeated. * * *

The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question. Its inaction on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammelled. As the main object of that commerce is the sale and exchange of commodities, the policy thus established would be defeated by discriminating legislation like that of Missouri."

In the case of Railroad Company v. Husen, 95 U. S., 465, 469-470, this court had under consideration a statute of the State of Missouri which prohibited importation of certain kinds of cattle into the State of Missouri during a certain period of the year. The court held the act was an attempted **regulation** of interstate commerce and was void, saying that the transportation of property from one state to another is undeniably interstate commerce, and that any interference with that transportation is necessarily beyond the power of the states. The court further said:

"The Missouri statute is a plain interference with such transportation, an attempted exercise over it of the highest possible **power, that of destruction.** * * The object and effect of the statute are, therefore, to obstruct interstate commerce, and to discriminate between the property or citizens of one state and

that of citizens of other states. * * * **Transportation is essential to commerce, or rather it is commerce itself, and every obstacle to it, or burden laid upon it by legislative authority, is regulation.**"

In the case of Hall vs. De Cuir, 95 U. S., 485, 488, this court held a statute providing that carriers of passengers should give all persons equal privileges without discrimination on account of race or color, unconstitutional as applied to a steamboat carrying passengers in and out of a state. It was there said:

> "But we think it may safely be said that state legislation, which seeks to **impose a direct burden** upon interstate commerce, **or to interfere directly with its freedom,** does encroach upon the **exclusive power** of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instrument to be employed after coming within the state, but directly upon the business as it comes into the state from without **or goes out from within.**"

In County of Mobile v. Kimball, 102 U. S., 691, 697, Mr. Justice Bradley, delivering the opinion of the court said that, among the subjects which are national in their character and "admit and require uniformity of regulation affecting alike all the states," is "all that portion of commerce with foreign countries or between the states which exists in the transportation, purchase, sale and exchange of commodities." The learned justice further said, speaking of this subject:

> "Here there can of necessity be only one system or plan of regulation, and that congress alone can prescribe. **Its non-action in such cases with respect to**

any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity, or by that means of transportation, shall be free. There would, otherwise, be no security against conflicting regulations of different states, each **discriminating in favor of its own products and citizens and against the products and citizens of other states.** And it is a matter of public history that the object of vesting in congress the power to regulate commerce with foreign nations and among the states was to insure uniformity of regulation against conflicting and discriminating state legislation."

In Brown vs. Houston, 114 U. S., 622, Mr. ustice Bradley said, upon this point:

"The power to regulate commerce among the several states was granted to congress in terms as absolute as is the power to regulate commerce with foreign nations. If not in all respects an exclusive power, if in the absence of congressional action the states may continue to regulate matters of local interest **only incidentally affecting foreign and interstate commerce,** such as pilots, wharves, harbors, bridges, tolls, freights, etc., still, according to the rule laid down in Cooley vs. Philadelphia Wardens, 53 U. S., 12, How. 299, 319 (13:996, 1004), the power of congress is exclusive whenever the matter is national in its character or admits of **one uniform system** or plan of regulation, **and is certainly so far exclusive that no state has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the states, as congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other states coming or brought within its jurisdiction.**"

In Leisy vs. Hardin, 135 U. S., 100, 108, this court declared unconstitutional a statute of the state of Iowa prohibiting the importation of intoxicating liquors within its territory.

In the opinion, Chief Justice Fuller said:

> "Hence, inasmuch as **interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it, or allowing the states so to do, it thereby indicates its will that such commerce shall be free and untrammelled.** * * *.

The learned justice further said that a state has no power to define the articles of interstate commerce; that if such power existed it might be selfishly used by a state for the promotion and benefit of its own interests, and that the commercial anarchy and confusion which were sought to be avoided by the adoption of the Commerce Clause of the constitution would soon result from the "diverse exertions of power by the several states of the Union."

In Western Union vs. James, 162 U. S., 650, Mr. Justice Peckham said:

> "In regard to those matters relating to commerce which are **not of a nature to be affected by locality,** but which necessarily ought to be the same over the whole country, it has been frequently held that the silence of Congress upon such a subject, over which it has unquestioned jurisdiction, was equivalent to a declaration that in some respects commerce should be free and unregulated by any statutory enactment."

In the Minnesota Rate Cases, 230 U. S., 352, 57 L. Ed., 1511, 33 Sup. Ct., 729, the court has recently restated the rules which were developed through the cases from which we have quoted, and others. This court there said, speaking through Mr. Justice Hughes:

> "If a state enactment **imposes a direct burden upon interstate commerce**, it must fail regardless of Federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which in the absence of federal regulations should be free. If the acts of Minnesota constitute **a direct burden** upon interstate commerce, they would be invalid without regard to the exercise of federal authority touching the interstate rates said to be affected. On the other hand, if the state, in the absence of federal legislation, would have had the power to prescribe the rates here assailed, the question remains whether its action is void as being repugnant to the statute which Congress has enacted.
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> * * * * * * * * * *
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> The general principles governing the exercise of state authority when interstate commerce is affected are well established. The power of Congress to regulate commerce among the several states is supreme and plenary. It is 'complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution.' (Gibbons vs. Ogden, 9 Wheat., 1, 19 L. Ed., 23.) The conviction of its necessity sprang from the disastrous experiences under the Confederation when the states vied in discriminatory measures against each other. In order to end these evils, the grant in the constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from state control and to provide effective regulation of that intercourse as the national interest may demand. * *
>
> The grant in the Constitution of its own force, that

> is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant **which are of such a nature as to demand that if regulated at all their regulation should be prescribed by a single authority.** It has repeatedly been declared by this court that **as to those subjects which require a general system of uniformity of regulation the power of Congress is exclusive.** In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act, and when Congress does act the exercise of its authority over-rides all conflicting state legislation."

(Bold type ours in the above quotations.)

Thus the rules have been worked out in the decisions. The interdiction of the commerce clause is against state legislation which lays a direct burden upon interstate commerce, "or imposes restrictions, either by way of taxation, discrimination, or regulation, upon commerce between the states." Covington, etc., Bridge Co. vs. Kentucky, supra.

(d) The Application of the Rule That as to Those Subjects "Which are of Such a Nature as to Demand that if Regulated at all, Their Regulation Should be by a Single Authority" the Power of Congress is Exclusive, to the Act in Question.

The application of this rule to the legislation here drawn in question is, in our judgment, plain. The language of Mr. Justice Woodbury in the Passenger Cases, 7 Howard, 282, seems to us to fit the instant case with remarkable exactness. We quote again that language:

> "So far as reasons exist to make the exercise of the constitutional power exclusive, as on matters of **exterior, general and uniform cognizance,** the construction may be proper to render it exclusive."

It is difficult to see how any regulation, the effect of which is to determine the proportionate shares and rights of consumers of natural gas in five states, including the plaintiff state, can be anything except a "matter of exterior, general and uniform cognizance." Neither the legislature nor the courts of West Virginia have the power to determine the rights of the citizens of Cleveland, Columbus, Cincinnati, and the other approximately three hundred cities and towns in the plaintiff state, if the statement made in Cohen vs. Virginia, 6 Wheaton, 264, that

> "in all commercial regulations we are one and the same people"

is still the law of the land.

Again, the language of the court in the case of **Cooley** vs. Port Wardens, 12 Howard, 310, as follows:

> "But when the nature of a power like this is spoken of, when it is said that the nature of the power requires that it should be enforced exclusively by congress, it must be intended to refer to the subjects of that power, and to say that they are of such a nature as to require exclusive legislation by congress. * * * Some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; * * *."

This language again covers the situation presented by the instant case, the transportation interstate of a product which is the subject of public utility service, and in which over three and one-half millions of people in the plaintiff state according to well recognized rights of public utility consumers, have a right and an interest. This is not a matter which can be said to permit diversity of rule in the different states, through which the lines carrying this public utility product happen to pass.

It is obvious that if each of such states has the power to make its own rules, no matter what may be their effect upon the interstate transportation of gas, or upon the rights and property of consumers of gas located beyond their jurisdiction, the matter will at once take this shape; that the state in which the gas is produced will take all that it "desires" for all purposes; that the state through which the transporting lines next pass will take all that it "desires" for all purposes; that the states lying beyond will take what is left, if any, in the order of their location. The evidence in the case at bar shows conclusively that, within a short period from the time that an act

such as the act in question should become effective and be enforced, if such an act is ever permitted to be enforced, all of the gas will be taken by the first state, namely the state in which the gas is produced. Thus, we would be reduced again to the condition which existed before the constitution, when the only governing principle would be that of state selfishness, which would soon be adopted by every state with reference to its most valuable products as a justifiable retaliatory policy.

> "And yet we have said 'in matters of foreign and interstate ommerce there are no state lines.' "
>
> West vs. Kansas Natural Gas Company, supra.

The statute in question herein not only regulates but lays a direct prohibition and restriction upon the interstate transportation of natural gas. It imposes upon the owners of this commodity, obligations with reference to the disposition of it, the natural and necessary effect of which would be to prevent its transportation from the State of West Virginia. The owners of natural gas are ordered, by the provisions of the statute, to sell their commodity inside the state, which is a method, not very indirect, of telling them that they must not transport it outside the state.

This is the most primitive and most obvious form of violation of the commerce clause. The cases hereinbefore quoted from show that this court has always held that, "state legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom, does encroach upon the exclusive power of

Congress;" Hall vs. DeCuir, 95 U. S., 485, 488; and that "all that portion of commerce with foreign countries or between states which consists in the transportation, purchase, sale and exchange of commodities" admits and requires uniformity of regulation. The prohibition of commerce attempted by this act is so gross that it almost baffles argument. The act does not merely **regulate** commerce according to the ordinary meaning of the word regulate. It **prohibits** commerce, and the only material question of fact is, "How much of this commodity will, under the act, be prohibited from moving in interstate commerce, and how much, if any, will be permitted to move." We believe that this is a true statement of the problem presented by this statute, and that this court has never been confronted with a state law which, when stripped of its verbiage, attempted a more direct violation of the commerce clause of the constitution.

As to the question of how much gas would be prevented from moving in interstate commerce by this act, the evidence in the case clearly shows that the immediate effect of the enforcement of the act would be to prevent a considerable proportion of the amount of gas now moving in interstate commerce from continuing so to move, since it is proved that all of the gas companies which now transport gas in interstate commerce are obliged to apportion their inadequate supply between their intra-state and interstate consumers and hence could not furnish "a supply of gas reasonably adequate for the purposes of" consumers inside the State of West Virginia without, to a corresponding extent, subtracting from the sup-

ply which is now moving in interstate channels. The statute, in its second section, would further reduce the amount moving in interstate commerce by requiring such owners to furnish gas to other persons not now being furnished, but who may desire to connect with the lines of the owners, and secure a supply, even though the owners of the gas have never held themselves out as being willing, and are not in fact able, to serve them, and this gas would also have to be subtracted from the part now moving interstate.

The evidence shows (Record, p. 216) that the gas appropriated by the statute from these interstate companies must come from either of two places on the pipe line system: (a) by a connection to an intake line between the compressing stations and the wells, in which case it will cause a shutting down of the station in order to permit gas to accumulate in the intake line sufficient pressure to give the desired service, and thus wholly interrupt and prohibit the export of gas from that station; or (b) by a connection to the line discharging from the compressing station towards the state of export, in which case it will divert and diminish the supply so moving interstate.

The evidence further shows, that the ability to secure a supply of this valuable fuel would immediately produce a vastly increased demand inside the State of West Virginia, which would have to be met by further subtractions from the gas now moving interstate, and that these demands would in a short time, consume all of the supply of gas, and leave practically none at all to move across the state lines. The effect upon interstate

commerce then of these regulations and restrictions would be direct, and clearly within the rule of the cases cited. It would create the commercial anarchy and confusion so happily discarded by the commerce clause of the constitution. The answer admits (pages 30 and 31) and the evidence shows that the owners of this gas have been fulfilling their duty as public servants, to the best of their ability, by apportioning their supply among their consumers, without reference to state lines. Consumers in all the states have shared in the advantages, and in the hardships incident to inadequate supply, without discrimination, according to recognized rules of public utility duties. This, of itself, is a fair explanation of the **inaction of Congress** upon this matter, and it is doubtful whether congressional action could better the situation, but the fact remains that the power which could control this interstate movement of natural gas has seen fit to remain inactive, and therefore its movement must be "free and untrammeled." If the owners of this gas should, of their own volition, seek to discriminate against any of the states here interested, it may be assumed that relief from the Congress would not be sought in vain, nor long delayed.

We conclude, then, upon this point, **that the subject in question is one of general cognizance, requiring uniform regulation, if any, and hence the attempted prohibition and regulation by the State of West Virginia must fail.**

V.

EVEN A POLICE REGULATION MUST BE ABSOLUTELY IMPARTIAL AND NON-DISCRIMINATORY AS BETWEEN INTERSTATE AND INTRASTATE TRANSACTIONS.

Even though the field sought to be covered by state legislation is within the second class, as defined by this court in the case of Covington Bridge Company vs. Kentucky, 154 U. S., 204, supra, viz., those cases in which the states may, in the absence of legislation by Congress, act, nevertheless it may also lie within the scope of an important corollary to that rule, and the legislation may yet be void. The corollary is that any state regulation though prima facie local in its nature, must not be so drawn or applied as to operate as a discrimination against interstate commerce. Numerous cases have applied this rule, or recognized its existence.

In Ward v. Maryland, 12 Wallace, 418, the Maryland statute required all traders to apply for a license and pay a fee which in the case of a resident was graduated from twelve dollars to one hundred and fifty dollars, according to the value of the stock, but in the case of a non-resident selling imported goods, the fee was fixed at three hundred dollars. The statute was held void, the majority of the court basing their decision on the equal privileges and immunities clause while the minority concurred upon the additional ground of the commerce

clause. In the course of the majority opinion it was said that the statute

> "either works a complete prohibition of all commerce from the other states in goods to be sold by sample within the limits of the described district, or at least creates an unjust and onerous discrimination in favor of the citizens of the state enacting the statute."

In Woodruf v. Parham, 75 U. S., 123, the court expressly upheld a tax of the city of Mobile, but only because it was uniform and imposed alike upon all property within the city. The court expressly said, however:

> "There is **no attempt to discriminate injuriously against the products of other states, or the rights of their citizens,** and the case is not, therefore, an attempt to fetter commerce among the states, or to deprive the citizens of other states of any privilege or immunity possessed by citizens of Alabama. **But a law having such operation would,** in our opinion, be an infringement of the provisions of the constitution which relate to those subjects, and therefore, void."

The case of Weldon v. Missouri, 91 U. S., 275, is in point. There the court reviewed a statute of Missouri imposing a peddler's license tax upon persons going from place to place to sell wares not the product or manufacture of the state and not imposing a like tax upon the sale of similar articles, the growth, product, or manufacture of Missouri. This was a discrimination and the act imposing the tax was held bad, Mr. Justice Field saying:

> "Imposts operating as an absolute exclusion of the goods would be possible, and all the **evils of discriminating state legislation, favorable to the interests of**

> **one state and injurious to the interests of other states** and countries, which existed previous to the adoption of the constitution might follow, and the experience of the last fifteen years shows would follow from the action of some of the states."

In Guy v. Baltimore, 100 U. S., 434, an ordinance of the city of Baltimore imposing wharfage dues upon vessels arriving from other states and not upon those from other parts of the state, was before the court for review. The court held the ordinance unconstitutional. Mr. Justice Harlan, in delivering the opinion, said:

> "It must be regarded as settled that no state can, consistently with the federal constitution, impose upon the products of other states brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other states, **more onerous public burdens** or taxes than it imposes upon the like products of its own territory. * * * Under the authority of the state, it may also exact wharfage fees, equally, from all who use its improved wharves, provided such charges do not exceed what is fair remuneration for the use of its property. But it cannot employ the property it thus holds for public use so as to hinder, obstruct or burden interstate commerce **in the interest of commerce wholly internal to that state.**"

Another case is that of Walling v. Michigan, 116 U. S., 446. There the state had passed a law imposing a specific tax on persons engaged in the sale of liquors to be shipped into the state without imposing a like tax on persons selling liquors manufactured in the state. The court held

this a clear discrimination. In the course of the opinion Mr. Justice Bradley said:

> "A discriminating tax imposed by a state, **operating to the disadvantage of the products of other states** when introduced into the first mentioned state, is, in effect, a regulation in restraint of commerce among the states, and as such is a usurpation of the power conferred by the constitution upon the congress of the United States."

In the case of Minnesota v. Barber, 136 U. S., 313, the state of Minnesota passed a law, the title of which declared it to be passed for the protection of the public health, and hence a police measure. It required the inspection of all cattle, sheep and swine slaughtered for human food. This inspection was to be made four hours before the slaughter of the animal. Any person selling the meat of animals not so inspected was punished. The law on its face applied to every one without regard to his selling meats from animals raised in the state or animals brought in. The court declared it to be one thing to exclude from its limits cattle, sheep or swine actually diseased or meats by their condition unfit for use, but an entirely different thing to interdict the sale of meat from animals not slaughtered in the state. The act was held unconstitutional.

As another instance of the non-discriminatory treatment which the Supreme Court exacts of a state when it attempts to deal even with matters embraced in the second class, we refer to the case of Brimmer v. Redman, 138 U. S., 78. The court had before it an act of Virginia passed undoubtedly under its police power, for its pre-

amble recited the fact that unwholesome meats were being sold in Virginia and then declared it unlawful to sell in the state any fresh meats which had been slaughtered one hundred miles or over from the place at which it was offered for sale, except and until it had been inspected and approved by inspectors provided for by the act. The act also imposed the duty upon all persons before offering for sale any meats so slaughtered to apply to the inspectors to have the same approved. The court declared the act a **discrimination against meats from other states** and unconstitutional. Mr. Justice Harlan said:

> "Undoubtedly, a state may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the power enforced by the constitution upon congress, or infringe rights granted or secured by that instrument. But it may not, under the guise of exerting its police power, or of enacting inspection laws, **make discriminations against the products and industries of some of the states in favor of the products and industries of its own or of other states.** The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right under the constitution, to compete in the markets of Virginia, upon terms of equality, with the owners of like meats, from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. Any local regulations which, in terms or by its necessary operation, denies this equality in the markets of a state, is, when applied to the people and products or industries of other states, a direct burden upon commerce among the states, and therefore void. * * * Nor can this statute be brought into harmony with the constitution by the circumstances that it purports to apply alike to the citizens of all the states, including Virginia; for a burden imposed by a state upon inter-

> state commerce is not to be sustained simply because the statute imposing it applies alike to the people of the state enacting such a statute."

In Darnell & Son v. Memphis, 208 U. S., 113, the state statute was held void which imposed a tax on persons not residing within the state who engaged in selling imported liquor while no tax was imposed on those selling domestic liquors. The court said that while the state had taxed articles imported from another state after the same had become massed with the general property within the state this rule had—

> "always expressly excluded the conception that a state could, without directly burdening interstate commerce, discriminate against such property by imposing upon it a burden of taxation greater than that levied upon domestic property of a like nature."

In Voight vs. Wright, 141 U. S., 62, the State of Virginia had passed a law requiring an inspection of all flour brought into the state and imposing a fee therefor, and providing for **no inspection of home flour**, was declared to be a discrimination against the products and industries of other states in favor of its own, and so unconstitutional and void.

No argument is needed to show that the rules governing interstate commerce apply as well to that entering as that leaving the territory of a state. Upon this a well-known writer (Cook on the Commerce Clause, Section 61), expresses himself as follows:

> "Although the question of the validity of restrictions imposed under authority of a state more fre-

quently arises with reference to transportation out of the state, it seems clear enough that, so far as concerns such question, there is no substantial distinction between transportation into and transportation out of the state, whether of property or of persons."

This court has, in a recent case, confirmed the statement of this author. In the case of West vs. Kansas Natural Gas Co., 221 U. S., 229, supra, Mr. Justice McKenna, in delivering the opinion of the court declaring invalid a statute of Oklahoma which restricted the **exportation** of natural gas, said, 221 U. S., at 262:

> "This discrimination is beyond the power of the state to make. As said by the Court of Appeals in the eighth circuit, no state can, by action or inaction, prevent, unreasonably burden, **discriminate against**, or directly regulate, interstate commerce, or the right to carry it on."

See also Coe vs. Errel, 116 U. S., 517.

VI.

THE STATUTE OF WEST VIRGINIA DISCRIMINATES AGAINST INTERSTATE COMMERCE IN NATURAL GAS.

The manifest intent of the statute is that the wants of consumers in West Virginia shall be fully satisfied out of the supply of gas available, in preference to the consumers in other states. Its necessary effect is that the consumers in other states can obtain only what is left after the wants of West Virginia consumers are fully met. The consequence of the enforcement of the statute will be

not merely a reduction of the total amount of gas available for consumers outside of the state by the amount diverted to consumers within the state but such irregularity and uncertainty in the supply available for outside consumers as will in large measure forthwith and eventually altogether make it impracticable for them to continue the use of natural gas.

The intent of the statute appears (1) from a consideration of the nature and conditions of the business to which it applies, (2) from the history of the events attending the enactment of the statute and (3) from the averments of the answer interposed by the State of West Virginia.

(1) The system of pipe lines is a natural development. Companies organized for the distribution of natural gas in centers of population have sought their supply further and further afield as the local supply has become exhausted or, by reason of increased demand, has become inadequate. The owners of gas producing territory have sought more remote markets for the gas which they have produced in excess of the requirements of the markets nearer at hand. The growth of the system has been substantially independent of state lines, the most available fields or most favorable markets being sought without reference to their location upon either one or the other side of a state line. In some cases the same company distributes gas in two or more states. In other cases the companies in one state turn over gas for distribution in other states. There are a multitude of contracts and relations between the companies, which have grown up in the ordinary course of business development and which have been hereinbefore referred to.

In the course of events West Virginia has become a great source of supply for the other states. There has been no discrimination against her in those cases where gas has been taken out of the state by public service corporations operating both within and without the state; the customers within and without the state have been treated alike. In nearly all of the contracts under which West Virginia gas has been sold by West Virginia companies to other companies for distribution, the contracts of sale have reserved a preference for the domestic consumers of the selling companies. The business is regulated by principles that are the outgrowth of the peculiarities of the business. Inasmuch as the demand for domestic consumption, that is to say, for heating houses and other domestic uses, varies enormously from one season of the year to another and even from day to day and the demand for domestic purposes must always be met if the business is to continue, a preference is always given to domestic consumption over industrial consumption. If the weather is very cold or there is any other cause of shortage, the industrial consumption is cut down or cut off in order that the domestic consumption may be maintained. This principle has prevailed throughout West Virginia, Pennsylvania and Ohio.

The production of natural gas and the capacity of the transportation systems are not more than sufficient generally to meet the domestic demand in periods of cold weather. As an economic proposition, it would be impossible to make them so. The consequence is that everywhere in periods of very cold weather, all available gas

is necessary to supply the domestic consumption. When the West Virginia statutes declares that the wants of West Virginia consumers, industrial and miscellaneous as well as domestic, shall be fully supplied at all times, the necessary meaning is that in periods of cold weather the wants of West Virginia consumers must be supplied at the expense of consumers in other states because, (a) there is no source from which the gas can be obtained except by a curtailment of the amount going into other states and (b) because if the first section of the statute does not mean this it adds nothing to the existing public service law. See the West Virginia Public Service Act, Sections 4, 5, 7 and 23, found on pages 55, 56, 57 and 67, respectively, of the defendant's answer. See also Carnegie Natural Gas Co. vs. Swiger, 72 W. Va., 557, 46 L. R. A., N. S., 1073.

(2) The circumstances preceding and attending the enactment of the statute may properly be referred to to show its intent. The testimony of Governor Cornwell of West Virginia (Record, pp. 1195, 1196), hereinbefore referred to, shows that the agitation for this statute began with the manufacturers and other consumers around Clarksburg, West Virginia, and that with the approach of cold weather, the season during which the gas companies have great difficulty in furnishing an adequate supply of gas even for domestic consumers, these manufacturers sought to have relief from the shortage of the gas supply for manufacturing purposes, by the enactment of this statute. It is apparent, then, that those who sought the enactment of the law, and the legisla-

ture which enacted the law, must have intended that the manufacturing interests of West Virginia should be furnished an adequate supply of natural gas at the expense even of domestic consumers in other states. The discrimination, then, which is apparent in the language of the statute, is equally apparent in its history and the circumstances surrounding its enactment.

(3) The answer declares that the purpose of the statute is to provide for the requirements of the inhabitants of West Virginia. It declares whatever effect the enforcement of the statute has on the inhabitants of other states is direct and incidental. The answer also, however, declares that there is a shortage of natural gas in periods of cold weather; that the situation has to be met by a curtailment either of the use to which gas is put or of the area over which it is distributed; that the inhabitants of West Virginia have a prior claim upon gas originating in West Virginia and, in effect, that the statute is enacted to enforce this prior claim.

The consequence of the enforcement of the statute will, of course, be that on cold days when the West Virginia domestic consumption will rise to its peak the industrial consumption in West Virginia will not be cut down or cut off but will continue at the expense of the domestic consumption in other states. But the effect of this will not be limited to depriving Pennsylvania and Ohio of the amount of additional gas consumed in West Virginia. If the effect were only to retain for use within the state ten per cent. of the gas now going out of the state, this would probably be enough to completely ruin the busi-

ness of distributing gas for domestic purposes outside of the state. The reason is that this ten per cent. would all be retained during a few days of great severity and the domestic service which would be liable to fail in severe weather would therefore be useless in all weathers.

That the fulfilment of the requirements laid down in the statute in question would be at the expense of the gas consumers in other states now dependent upon West Virginia gas for their supply, is shown conclusively by the determination of the Public Service Commission of West Virginia in its decision of the case of Kelly Axe Mfg. Co. vs. United Fuel Gas Company, P. U. R. A. 289. At page 294 of this report the Commission said of the defendant, The United Fuel Gas Company, which is, as appears from the record in this case, one of the largest producers and transporters of natural gas in West Virginia:

> "The defendant delivers its gas to its consumers in West Virginia and to the distributing companies in Ohio through one system of pipe lines and from the same gas fields in West Virginia. It appears from the record that the defendant has a sufficient production or supply of natural gas in the State of West Virginia to furnish a reasonably adequate supply of gas to all of its consumers in the State of West Virginia. It does not affirmatively appear from the record that the defendant has a sufficient supply or production of gas in the State of West Virginia to furnish a reasonably adequate supply of gas to all of its consumers in West Virginia without interfering with the supply of gas demanded of the defendant for the consumption of the distributing companies in the State of Ohio."

The purpose of the statute, as disclosed on its face and by the averments of the answer, is to regulate interstate commerce in natural gas to the advantage of West Virginia and at the expense of the other states. It gives to all industrial consumers in West Virginia and also to local public service companies which have not maintained their sources of supply an option to be exercised at any time upon the gas otherwise available for distribution in other states.

The principle of the entire statute is the full supply of the wants of the residents of West Virginia at the expense of the residents of other states. The statute deals with an industry in which the available supply of gas is distributed by the different agencies concerned among their customers, without regard to state lines and according to equitable principles that have become generally established. It seeks to establish in place of this method of distribution a scheme by which the residents of West Virginia will in every respect have a preferential right in West Virginia gas.

There is no doubt that the West Virginia statute is intended to work a discrimination in favor of the inhabitants of West Virginia and there is no doubt that its practical effect would be to place the inhabitants of other states at a very great disadvantage in comparison with West Virginia residents. Instead of a system under which consumers of natural gas everywhere bear their share of any shortage, according to equitable principles, the statute would establish a system by which the entire hardship due to a shortage must be borne by the inhab-

itants of other states to the exoneration of the inhabitants of West Virginia. Because the statute intends and in its practical operation would bring about a discrimination against interstate commerce, it is void as a direct burden upon such commerce. It is not necessary to the position of the complainants to maintain that the statute in its practical operation would entirely prohibit the exportation of gas from West Virginia, as was the case with the statute under consideration in West v. Kansas Natural Gas Co., 221 U. S., 229, nor is it necessary for the plaintiffs to maintain that the regulation of interstate commerce in natural gas is so exclusively within the domain of congress as to render void every state action in any way affecting such commerce. The fact that the statute works an intentional and substantial discrimination condemns it equally whether or not the discrimination is in degree equivalent to prohibition. The same element of intentional and substantial discrimination makes it unnecessary to consider just where the line is to be drawn between what a state may and may not validly do in the way of regulations incidentally affecting interstate commerce in natural gas.

In Pennsylvania Gas Co. v. Public Service Commission, 252 U. S., 23, it was held that the Public Service Commission of New York, in the absence of legislation by congress, had jurisdiction over the rates charged to local consumers by a public service company bringing in its gas from another state. But there is no question that the action of the Public Service Commission would have been void had it sought to compel the company to pre-

fer its New York consumers over its consumers in other states.

On page 33 of the answer the defendant admits that the enforcement of the statute will "indirectly and incidentally diminish" the supply of gas transported to Ohio, unless the production of gas be increased, which the pleadings admit and the evidence shows to be impracticable. The naive suggestion is made at this point in the answer that the answer to the question, "Whether or not the quantity thereof transported to, or for use in Ohio or any other state will be appreciably decreased will depend in a large degree upon the apportionment of the gas transported from West Virginia by said seven companies among the several states, **other than West Virginia,** desiring to consume the same." This is another way of saying that, after West Virginia has secured her needs and "desires" she is quite willing that the state which has the next chance at the supply may adopt similar measures to secure her wants.

> "And yet we have said that 'in matters of foreign and interstate commerce there are no state lines.'"
>
> West vs. Kansas Natural Gas Co., supra.

The defendant's answer again admits the discriminatory character of the legislation, on page 37 of the answer. In the face of the language of the act in question, which, in Section 1, requires an adequate supply,

> "whether for domestic, industrial, or other consumption, **within this state,**"

and in Section 2 requires gas companies to extend their

territory by making connections with other companies which they have never served nor held themselves out to serve, the answer suggests to the State of Ohio that with reference to the inadequacy of supply which exists and will be suggested by the discrimination in favor of west Virginia,

> "The remedy therefore must be the contraction by internal regulation of the State of Ohio, of the territorial scope of service of distribution and of the number of its consumers."

Defendant's answer, page 37. The discrimination is deliberate, intentional, but accompanied with humanitarian suggestions as to how to avoid its inevitable consequences.

The statute does not lay down any general rule of public service duty. It requires that owners and transporters of gas disregard all known rules of public service duty. Its discriminatory purpose and effect are obvious in the following provisions:

1. It does not make nearness to the source of production the test as to whether a consumer or community shall have a preferred right to a gas supply. It makes state lines the controlling thing. All persons and communities **inside the state** shall be fully supplied before any gas is transported outside the state. Distance is immaterial, and the state line is made the point of division between those whose rights are preferred and those whose rights are disregarded. It will be noted that, so far as persons and communities inside the state are concerned, the test of the right to service is, by the second

section of the statute, made to depend upon the ability of the gas company to adequately supply its present consumers and communities inside the state, and no new consumers need be connected unless there is a surplus.

2. Priority of time of connection with the lines of the gas company gives no right whatever to companies or consumers or communities located **outside the State of West Virginia. Inside the state,** as we have just pointed out, priority of connection with the lines gives an absolute priority of right to service and no new communities or consumers need be connected unless there is a surplus beyond an adequate supply for present consumers.

3. All consumers **"within this state"** are entitled to have their wants and **"desires"** fully supplied for every purpose "whether for domestic, industrial or other consumption," before even the most preferred class of consumers, namely, the domestic consumers, outside the state are entitled to a single foot of gas. It will be observed here that this discrimination is in complete violation of what West Virginia herself recognizes as public utility duty. From the testimony of Mr. Lewis, a member of the Public Service Commission of West Virginia (record, page 1298), it is shown that by the rule of the Public Service Commission of West Virginia, in case of a shortage, domestic consumers are preferred and industrial consumers are shut off. That is the rule, then, **"within the state."**

These discriminations show clearly that it was not the purpose, and will not be the effect, of the statute in question to lay down any rule of public service duty generally

applicable "with eyes blinded to state lines." In every application of the statute, the duty laid down ends at the state lines, and, by consequence, requires the contrary treatment by these companies of their consumers beyond the state lines.

We conclude, then, upon this point, that, even though the statute in question should be deemed to be of such a nature that it would fall within the general scope of class 2, according to the classification made by this court in the case of Covington Bridge Co. vs. Kentucky, 154 U. S., 204, neverthless, it is clearly unconstitutional because its whole purpose and effect is to discriminate against the movement of natural gas in interstate commerce and the rights and privileges of consumers of natural gas, located outside the boundaries of West Virginia, the discrimination being made to depend solely upon the location outside the state.

No gas company could comply with this statute, without locating at the point where its lines cross the state lines, a means for the physical stoppage of the flow of natural gas. Its duties with reference to two consumers, neighbors, would be entirely different, if those neighbors were on opposite sides of the state line, and the only method by which the gas company could observe the provisions of the statute would be by installing a gate or valve in its lines between these two consumers so that it could supply the intrastate consumer adequately for all purposes "whether for domestic, industrial or other consumption," before his neighbor across the state line would be entitled to a foot of gas. It should be noted that

no claim is made that this statute is a conservation measure. It is not, of course, since its enforcement would require that the producing gas companies, in order to comply with its provisions, and at the same time attempt to meet their legal obligations and public service duties to their millions of consumers in states other than West Virginia, and to protect investments worth hundreds of millions of dollars in those states from practically immediate destruction, should produce gas from all of their reserve territory as rapidly as possible. The consequence would be, of course, a wasteful orgy of gas consumption which would in a very short time completely consume the available supply, and the sooner destroy millions of dollars in value of property both inside and outside the State of West Virginia.

VII.

THE STATES HAVE NO RIGHT TO DEFINE THE SUBJECTS OF INTERSTATE COMMERCE, BUT THAT DEFINITION MUST BE MADE BY THE COURT, IN ACCORD WITH THE GENERAL UNDERSTANDING OF THE COMMERCIAL WORLD.

In the first paragraph of Section X. of the answer of the State of West Virginia appears the following language:

> "While this defendant admits that gas is or may be an article of interstate commerce, yet this defendant denies that gas placed in mains or pipes by public service gas companies, is either in interstate commerce or a legitimate article of interstate commerce,

unless and until it has reached the point where it is no longer subject to the public service in West Virginia, and the duties imposed by law upon public service gas companies have been observed and performed by them; and denies that the requirement of the performance or observance of the duties owed by such companies is an interference with interstate commerce or a burden thereon."

This statement of the answer shows that the legislation in question is an attempt on the part of West Virginia to define, in accordance with its own peculiar views, the proper articles of interstate transportation. This is an expedient which has been often tried, in order to evade the commerce clause of the constitution, but it has always failed, as this must fail, since it would amount to a nullification of this clause.

In the case of Bowman vs. R. Co., 125 U. S., 465, this court held that the question whether an article is or is not subject of commerce is to be determined by the usages of the commercial world, and does not depend upon the declaration of any state. In that case it was held that the State of Iowa could not forbid the transportation of liquor into its territory notwithstanding the prohibition laws of that state. Mr. Justice Matthews, in the opinion in that case, said:

"Can it be supposed that, by omitting any express declarations on the subject, congress has intended to submit to the several states the decision of the question in each locality of what shall and what shall not be articles of traffic in the interstate commerce of the country? If so, it has left to each state, according to its own caprice and arbitrary will, to discriminate for or against every article grown, pro-

duced, manufactured, or sold in any state, and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other states, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not choose, even, to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures, or arts of any description, and prevent the introduction and sale within its limits of any or all articles that it may select as coming into competition with those which it seeks to protect. The police power of the state would extend to such cases, as well as to those in which it was sought to legislate in behalf of the health, peace and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several states of the Union, it cannot be supposed that the constitution or congress has intended to limit the freedom of commercial intercourse among the people of the several states."

* * *

The doctrine of the Bowman case has been approved in Leisy v. Hardin, 135 U. S., 100, and Long vs. Michigan, 135 U. S., 161. See also Adams vs. Kentucky, 214 U. S., 218. The fact that this and other courts have repeatedly held natural gas to be a legitimate object of commerce and that it is regarded as a desirable commodity by all persons who can get it, and that all of the litigation upon the matter in the various courts has been caused by a desire to keep this valuable commodity, and to restrict the exportation of it, while in no case has there been any

effort to prevent the importation of it, clearly stamp natural gas as a legitimate commercial commodity. It can not be classed with diseased animals and meats, contraband of commerce, while states are striving for the right to share in it.

VIII.

THERE IS NO PUBLIC SERVICE DUTY OWED TO THE CONSUMERS INSIDE THE STATE OF WEST VIRGINIA WHICH JUSTIFIES THIS LEGISLATION PREVENTING OR RESTRICTING THE INTERSTATE TRANSPORTATION OF GAS.

It is claimed, on page 36 of the defendant's answer, the language of which has been hereinbefore quoted, that the fact that the possessors of gas, inside the state will be, under the act in question, burdened with a statutory duty to give a preference to consumers "within the state," and that therefore only such amount of gas as may remain after that duty is fulfilled is the legitimate subject of interstate commerce. This claim assumes the constitutionality of the legislation, and seeks to justify the restriction upon interstate commerce by pointing to the statute, when the validity of the statute is the whole question in this litigation.

It cannot be seriously claimed, even if there would be any advantage in so claiming, that the statute in question is merely declaratory of the common law relating to public service duty. One of the chief objects of the common law of public service was the prevention of dis-

crimination by a public service company. The act in question **requires discrimination** against the consumers outside the state, and seriously punishes a refusal to discriminate against them. The discriminatory nature of the statute has been discussed by us more fully in Division VIII. of this brief, **supra.**

The case of Vandalia Coal Co. et al. vs. Special Coal and Food Commission of Indiana et al., 268 Fed., 572, decided on Nov. 27, 1920, by the District Court for the District of Indiana, consisting of Baker and Page, circuit judges, and Anderson, district judge, bears strongly upon this question. The first two paragraphs of the syllabus of that case are as follows:

> "The Indiana Coal and Food Commission law and orders issued thereunder, requiring coal mines which had contracted to deliver their coal outside the state to sell the same to concerns within the state, is an interference with interstate commerce, and an interlocutory injunction will issue against its enforcement.
>
> Orders of the Indiana Special Coal and Food Commission requiring coal mines to deliver coal to specified concerns within the state, which impair contract obligations of coal mines which had otherwise contracted for their output, are unconstitutional, and will be temporarily enjoined."

The opinion of the court in that case shows that the court assumed, for the purposes of the decision, that the distribution of coal could be regulated by the state substantially as a public utility, yet the court holds that such regulation can not be permitted to interfere with

the right of the owners of coal to transport it beyond the state if they so desired. The court said, in its opinion:

> "First. That the operation of the statute, as indicated by the orders of the commission, is a direct interference with interstate commerce. When the coal is severed from the ground it becomes an article of commerce, and the owner of that commodity, under the commerce clause of the federal constitution (Article 1, Section 8), which recognizes no state lines, has the right, so far as the state is concerned, to sell and to contract to sell his entire output to citizens of other states. The orders are also an interference with interstate commerce by reason of the showing in the bill that the output of three of the five mines contracted to the Pennsylvania Company, an interstate carrier, under a contract meeting the approval of the Interstate Commerce Commission, which approval carries an implied finding of fact that the coal, so used, is directly consumed in, or in aid of, intertsate commerce."

The preliminary assumption made by the court puts the case on all fours with the case at bar. It was a case of an attempt by the state, in the exercise of its powers of regulation over a public utility enterprise to require that enterprise to fully supply all the demands of consumers inside the state, for its product, thus preventing the transportation out of the state of so much of its product as should be demanded inside the state. Thus it appears that state line barriers can not be erected under the guise of requiring adequate service from a public service corporation. The supposed self-interest which would demand that residents of Indiana be given a favored position with reference to the coal produced in that state, and the residents of West Virginia be given a favored posi-

tion with reference to the natural gas produced in that state, is an aggravated form of the same supposed self-interest which has prompted the enactment of every piece of legislation held invalid by this court as in conflict with the commerce clause of the constitution.

The Vandalia Coal Co. case, supra, involving the statute of Indiana, is significant in another respect. This court, in the case of West vs. Kansas Natural Gas Co., supra, decided in 1911, said:

> "The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seems to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is, in a sense, commercial, the business welfare of the state, as coal might be, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a state would confine them to the inhabitants of a state. If the states have such a power, a singular situation might result. Pennsylvania might keep its coal, the northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequence does such power tend? If one state had it, all states have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that 'in matters of foreign and interstate commerce, there are no state lines.' "

The language quoted was prophetic. It scotched the tendency to build commercial barriers out of the doctrine of conservation, but now the same tendency arises, to

build a commercial barrier out of a supposed duty of a public utility enterprise to serve adequately all of its consumers who happen to live on one side of a state boundary line, disregarding all others. The consequences of this doctrine, should it prevail, would be fully as bad as the ones pointed out in the West case, **supra.** When it is remembered that more and more enterprises which have been in the past free from public regulation, are now made by legislation the subject of such regulation, which practically puts them within the field of so-called public service companies, it is apparent that the statute involved in this case is as perilous to the doctrine that we are one country, commercially, as were the statutes interdicted by this court in any of the epoch-making cases involving the commerce clause. Shall the latest weapon created to serve state self-interest, "the adequate performance of a public service duty," be permitted to prevail against the principles which have withstood the most ingenious attacks since the constitution was adopted?

The possibility that many enterprises now not regulated may be lawfully brought within the field of public service enterprises is well shown by the language of this court in the case of German Alliance Insurance Company vs. Lewis, 233 U. S., 389, where this court reviewed the cases from Munn vs. Illinois, 94 U. S., 113, and commented upon all of them as follows:

> "The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence, to governmental regulation. The underlying

> principle is that business of certain kinds hold such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation."

The field has been farther extended since that time and will no doubt be still farther extended as the public interest demands. But it is obvious that if the statute in question here shall prevail, a dire consequence may follow from each such extension, which involves the subject matter or the facilities for interstate commercial intercourse.

The numerous cases in this court involving the question of the right of a state to compel the stopping of interstate trains are in accord with this view. A number of such statutes have been upheld upon the specific ground that they required no more than adequate local service, to which the communities inside the state are, of course, as much entitled as communities outside the state, since the railroad has held itself out to serve all communities where stations are established. L. S. & M. S. Ry. vs. Ohio, 175 U. S., 285; Mo. Pac. Ry. vs. Kas., 216 U. S., 262. It will be observed, however, that the rendering of adequate local service by such a utility as a railroad, as to which there are no physical limitations which prevent the expansion of its facilities as the demands upon it increase, need not at all interfere with its adequate rendering of interstate service. The railroad can handle the local service by local trains, if there is a reasonable demand for such service, and this court has held in numerous cases that if a sufficient local and connecting service is supplied by local trains, then interstate trains may not

be compelled to make stops which would unduly interfere with interstate transportation. Ill. C. Ry. v. Illinois, 163 U. S., 142; Cleveland, etc., Ry. v. Illinois, 177 U. S., 514; Miss. R. Com. v. I. C. Ry., 203 U. S., 335; Atlantic C. Line v. Wharton, 207 U. S., 328; Herndon v. Chicago, etc., Ry., 218 U. S., 135. In these cases the adequate rendering of local service is an aid to interstate commerce rather than an interference with it. However, in the case of a product limited in quantity, such as natural gas, and as to which, unlike a railroad, additional intrastate service cannot be furnished except directly at the expense of interstate service, then certainly there will be no preferential right given to a consumer simply because he happens to be located inside, rather than outside, the boundary line of a particular state. The same rule would doubtless be applied to the railroad cases, if a case should arise in which the rendition of full intrastate service would prevent the rendition of equivalent interstate service. In the case of Miss. R. R. Com. vs. Ill. Cent. R. R., 203 U. S., 335, Mr. Justice Peckham, delivering the opinion of the court, said, with reference to the two conflicting claims:

> "Both claims are to be considered, and after the wants of the residents within a state or locality through which the road passes have been adequately supplied, **regard being had to all the facts bearing upon the subject**, they ought not to be permitted to demand more, at the cost of the ability to successfully compete with its rivals in the transportation of interstate passengers and freight."

Among the "facts bearing upon the subject" in the case now before the court, as shown by the record, are

these: that there is an insufficient amount of natural gas to supply the "desires" of all persons "within the state" and out, who are drawing upon the lines of these companies and have legal rights to do so; that restrictions must be made; that communities not now on the lines can not, in justice to the consumers already being served, be connected; that in the cold weather the available supply should be given to the domestic consumers, and, even they should, if necessary, be required not to use it for their main heating plants. The legislature of West Virginia "had no regard" for these pertinent facts, but by this act seeks to coerce the gas companies to furnish to **the extent of the supplies of gas produced in West Virginia,**" a supply of natural gas reasonably adequate for the purposes, whether domestic, industrial, or otherwise, for which gas is consumed or desired to be consumed, * * * in this state.

The most casual reading of these railroad cases shows that the "desires" of the patrons of the railroads having intrastate facilities have no bearing upon the case. Their **reasonable needs** are, however, to be supplied, if in so doing the railroad is not disabled from similarly serving its patrons beyond the state.

IX.

EMINENT DOMAIN—THE FACT THAT THE COMPANIES WHICH TRANSPORT GAS IN INTERSTATE COMMERCE HAVE EXERCISED THE RIGHT OF EMINENT DOMAIN WITHIN THE STATE OF WEST VIRGINIA, OR HAVE ACCEPTED FRANCHISES OR OTHER PRIVILEGES TO WHICH ONLY PUBLIC SERVICE CORPORATIONS ARE ENTITLED, DOES NOT AMOUNT TO A DEDICATION OF THEIR ENTIRE SUPPLY OF GAS TO THE USE OF THE PUBLIC INSIDE THE STATE OF WEST VIRGINIA.

It is claimed, in the fifth division of the defendant's answer, that since the gas companies which transport natural gas which now moves in interstate commerce have claimed and exercised the right of eminent domain in the State of West Virginia and other franchises and special rights which were and are granted only to public service companies, by and under the laws of West Virginia, gives to the public within the State of West Virginia a preferential right in the gas produced and transported by these companies. This can not be the law. The practice of these companies was exactly the same at the time they were granted these rights, privileges and franchises, as is their practice now. The law of West Virginia, then, as does the law of all other jurisdictions, grants these rights to public service companies, as such

at least if they are furnishing a part of their product or service to consumers inside the jurisdiction which grants these rights. It is not necessary, as is conclusively shown by the fact that these companies have been granted these rights by the State of West Virginia, that both termini of their lines or all lines connected with them and served by them, lie inside the state. The Supreme Court of Appeals of the State of West Virginia adjudicated this matter in the recent case of Carnegie Natural Gas Co. vs. Swiger, 72 W. Va., 557, at 572, 46 L. R. A., ns., 1073. Miller, J., delivering the opinion of the court, said:

> "But it is argued that but few persons are or will be served in West Virginia by the proposed pipe line; that most of the gas is and will be transported into Pennsylvania; that the petitioner is a corporation under the laws of Pennsylvania, and that its principal business is to produce gas and transmit it into that state, and that the sovereign right of eminent domain is properly limited to the service of the people of the state where the power is invoked. While the petitioner is a foreign corporation, it avers and proves its authority to do business in this state. Having obtained authority to do business here, Sec. 30, Chap. 54, Code 1906, confers upon it the same rights, powers and privileges, and imposes upon it the same duties and liabilities, and subjects it to the same rules and regulations, as domestic corporations. Floyd v. National Loan and Invest. Co., 49 W. Va., 327, 54 L. R. A., 536, 87 Am. St. Rep., 805, 38 S. E., 653. Section 24, Chapter 52, of the code provides that 'such company shall, for the purpose of transporting natural gas, oils and water, be considered and held to be a common carrier, and subject to all the duties and liabilities of such carriers under the laws of this state.' The petition avers, and the evidence shows, that petitioner is serving many persons in this state with gas. True, but few at present are

being served by the particular line in question, but it avers and proves its willingness to serve all persons applying, subject to its proper rules and regulations. It avers and proves that it has fixed reasonable prices and rates for such service. If the petitioner is serving the people of West Virginia with gas, and all who apply, as it avers and proves, it can not be denied the right of eminent domain because it serves the people in another state into which its pipe lines go. There is not a particle of evidence in the case showing or tending to show, that petitioner has ever neglected its duty toward the people of this state. That but few are shown to be taking gas from the particular line sought to be extended through defendant's land is of little consequence. The petitioner is seeking business. Practically the same objections were interposed to the rights of the petitioner in Pittsburgh Hydro-Electric Co. v. Liston, and were met in the same way that we have met them here."

The duty of these gas companies, then, under the law of West Virginia, is the ordinary public service duty to serve adequately all consumers which it has held itself out to serve, either by its practice or by lawful contracts made in that behalf, to the extent of its available supply of the produce furnished. This duty does not begin nor end at state boundary lines. The right of a consumer beyond the boundaries of the State of West Virginia, but on the lines of the company, is just as much entitled to be protected under the public service law as is the right of a consumer inside the State of West Virginia.

X.

NATURAL GAS IS IN INTERSTATE COMMERCE IF IT IS IN THE COURSE OF TRANSPORTATION TO ANOTHER STATE, ALTHOUGH IT IS MINGLED WITH GAS WHICH IS NOT INTENDED TO BE TRANSPORTED OUT OF THE STATE.

It may be contended that, since most of the gas companies in West Virginia which own and transport the gas which is furnished to consumers in Ohio and other states, also supply gas direct to consumers, or in some instances to distributing companies, inside the State of West Virginia, none of the gas which is transported by these companies is in the course of transportation in interstate commerce. We believe that such a contention, if made, would be so obviously unsound as to hardly require an answer, but, out of an abundance of caution, we discuss the matter at this point.

In the case of Swift & Co. vs. United States, 196 U. S., 375, Mr. Justice Holmes made this statement of fundamental principles:

> "Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current

of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle."

In the case of Ohio R. R. Commission vs. Worthington, 225 U. S., 101, 106, 108, (1912), the facts were that coal was being transported by the defendant in error from a coal field in Ohio to the ports of Huron and Cleveland on Lake Erie, from which points the bulk of the coal was to be carried by lake vessels to ports in other states or in Canada. The Ohio Railroad Commission claimed that transportation, as far as the lake ports, was intrastate, and hence fixed the freight rates for this transportation. The court held that the act of the Ohio commission was void, as an attempted regulation of interstate commerce, and Mr. Justice Day, at page 108 of the report, said:

"It is true, as argued by the learned counsel for the commission, that this coal may be accumulated in large quantities at Huron, and only taken out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the state; but it must always be remembered that this 70 cent rate applies solely to such coal as is in fact placed upon vessels for carriage to beyond the state points, and as the Circuit Court said, **the substance of things is not changed by the fact that a small part may be unloaded at one of the Ohio islands in Lake Erie.** The situation then comes to this, that the rate put in force is applicable only to coal which is to be carried from the mine in Ohio to the lake, there placed upon vessels and thence carried to upper lake ports beyond the state. By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be

such, and the rate fixed by the commission, which is in controversy here, is applicable alone to coal which is thus, from the beginning to the end of its transportation, in interstate carriage, and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage."

On page 106 of the same case, Mr. Justice Day said:

"It appears that all the coal shipped at the lake cargo rate remains on the cars of the complainant until unloaded into a vessel, unless it should be diverted en route and devoted to some other purpose, but in that case the lake cargo rate does not apply. For instance, if it should be diverted to commercial use at Huron, the rate on commercial coal, which is $1 a ton, would govern.

There is testimony to the effect that when the coal leaves the mines it is not known in what vessel it will be loaded, nor to what particular ultimate destination it will go, and that sometimes such coal is sold and vessels arranged for after the coal is at Huron, but it is subject to demurrage charge if it remains on the cars beyond a specified time."

The Worthington case goes much farther than is required by the facts of the instant case. In the Worthington case the normal course of transportation was for the bulk of the coal to be transported interstate, but there were no contracts or other obligations which in fact fixed its destination beyond the boundaries of the State of Ohio. The owners of the coal had the full right, as far as appears, to divert the coal to local uses, and in practice, some of it was so diverted. Nevertheless, the nor-

mal course of transportation was interstate, and the commerce was held to have that status.

This court has held in the cases of Texas and N. O. R. R. vs. Sabine Tram Co., 227 U. S., 111, (1913), and R. R. Commission of La. vs. Texas and Pacific Ry. Co., 229 U. S., 336, (1913), that, when shipments are made to a port, of goods which are in fact, and in the regular course reshipped to a foreign destination, the goods are in interstate commerce, although the bills of lading are local and the goods will have to be reshipped to their foreign destination.

In the case of Texas and N. O. R. R. Co. vs. Sabine Tram Co., supra, Mr. Justice McKenna said, at page 130 of the opinion:

> "The lumber was ordered, manufactured and shipped for export * * * and the shipment was not an isolated one, but typical of many others which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber and in the year 1906, 39,554,000 feet. Nor was there a break in the sense of the interstate commerce law and the cited cases, in the continuity of the transportation of the lumber to foreign countries by the delay and its trans-shipment at Sabine."

The applicability of this language to the instant case is striking. Here the gas is produced, compressed and shipped for export. The exportation is a constantly recurring process, amounting to billions of cubic feet of gas per year. By every practical conception of the term "interstate commerce" the transportation of this gas is interstate.

And the interstate character of the gas so moved is not

changed though it is, in the state of its production, mingled with gas which is not intended to be transported out of the state or when in the state of its destination it is intermingled with gas of local production.

In the case of People ex rel. Pennsylvania Gas Co. v. Saxe, 229 N. Y., 446, the Court of Appeals held that a franchise tax measured by gross earnings, from all sources within the state, could not be imposed upon the business of a Pennsylvania gas company in transporting gas from Pennsylvania into New York and mingled with gas of local production before delivery. The court held the business corresponding to the amount of the foreign gas to be interstate commerce, upon authority of Pennsylvania Gas Co. v. Public Service Comm., 225 N. Y., 397; 252 U. S., 23; Ratterman vs. W. U. Tel. Co., 127 U. S., 411.

Again, in the case of R. R. Commission of Louisiana vs. Texas and Pacific Ry. Co., 229 U. S., 336, **supra**, Mr. Justice McKenna said, after citing the cases bearing upon this question:

> "The principle enunciated in the cases was that it is the essential character of commerce, not the accident of local or through bills of lading, which determines federal or state control over it. And it takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country."

In the case of Public Utilities Commission vs. Landon, 249 U. S., 236, at 245, Mr. Justice McReynolds, in the course of the opinion, said:

> "Interstate commerce is a practical conception and what falls with it must be determined upon consider-

ation of established facts and known commercial methods."

In Western Union Telegraph Company vs. Foster, 247 U. S., 105, (1918), where the point involved was whether stock quotations from the New York Stock Exchange delivered in Boston were in interstate commerce until their receipt at the broker's office in the latter city, Mr. Justice Holmes says, at page 113:

> "If the normal, contemplated and followed course is a transmission as continuous and rapid as science can make it from exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant on bond. * * *
>
> Practice, intent and the typical course, not title, or niceties of form, were recognized as determining the character * * *.
>
> It is admitted that the transmission from New York to Massachusetts by the telegraph company was interstate commerce. If so, it continued such until it reached 'the point where the parties originally intended that the movement should finally end.' Illinois Central R. R. Co. v. Louisiana R. R. Commission, 236 U. S., 157, 163."

In the case of Rearick vs. Pennsylvania, 203 U. S., 507, Mr. Justice Holmes, delivering the opinion of the court, said:

> " 'Commerce among the several states' is a practical conception not drawn from the 'witty diversities' (Yelv. 33) of the law of sales. Swift & Co. v. United States, 196 U. S., 375, 398, 399. The brooms were specifically appropriated to specific contracts, in a practical, if not a technical sense. Under such circumstances, it is plain that, wherever might have been the title, the transport of the brooms for the

purpose of fulfilling the contracts was protected commerce."

The fact that in some cases the title to the gas changes in the course of the transportation from West Virginia into Ohio, does not prevent the transportation from being considered as interstate commerce. This principle was set forth by this court in Swift & Co. vs. United States, 196 U. S., 375, hereinbefore quoted from, in which case Mr. Justice Holmes, delivering the opinion of the court, said, at pages 398, 399:

> "Taking up the latter objection first, commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle. And we need not trouble ourselves at this time as to whether the statute could be escaped by any arrangement as to the place where the sale in point of law is consummated. See Norfolk & Western Ry. v. Sims, 191 U. S., 441."

See also Gulf, Colorado and Sante Fe Ry. Co. vs. Texas, 204 U. S., 403, (1907).

The evidence in this case shows that more than 80 per cent. of the natural gas which enters the lines of the companies which transport gas interstate, is in fact and in

practice taken across the state lines, the remainder, of course, being distributed inside the state. (Record, p. 997). Those percentages are practically fixed by the contracts of these companies with consumers and other companies inside and outside the State of West Virginia, and by their public service obligations inside and outside the state.

The conception that, of a given mass of gas, 80 per cent. of the mass is in interstate commerce, and the other 20 per cent. is in intrastate commerce, is in no sense more difficult to grasp than the conception that of a given tank of oil, or mass of gas, or tract of land, or block of securities, 80 per cent. of the same is owned by A and the other 20 per cent. is owned by B; yet this conception of undivided ownership has been familiar to our law from its beginning.

If interstate commerce is, as this court has frequently said, a "practical conception," no tribunal can say of a mass of gas, of which in fact 80 per cent. is en route interstate, that none of the mass is in interstate commerce. Such a determination would be at best a "witty diversity" which should not be allowed to control important commercial relations.

XI.

THE ACT IN QUESTION IS VOID BECAUSE IT IMPAIRS THE OBLIGATIONS OF CONTRACTS IN VIOLATION OF SECTION 10 OF ARTICLE 1 OF THE CONSTITUTION OF THE UNITED STATES.

The proof in this case establishes that there are a large number of valid and existing contracts between the State of Ohio and corporations and natural persons who are citizens and residents of that state, which entitle them to a supply of natural gas, either for their own use or for further distribution to the public inside the State of Ohio, and of which contracts the public within said state are the beneficiaries. It also appears from the record that practically all of the municipalities within the State of Ohio are served with natural gas pursuant to contracts made between the municipalities and gas companies under the provisions of Sections 3982 and 3983 of the General Code of Ohio. (Record, p. 590.)

All of these contracts would be immediately impaired, and many of them rendered impossible of performance to any practicable extent, by the enforcement of the act in question. These contracts were all valid and lawful when made, many of them, as we have noted, being made by political subdivisions of the state, pursuant to express statutory authority of the complainant state. The contracts under which gas is furnished by the large inter-

state companies of West Virginia to other companies for distribution in this state uniformly recognize the established rules of public utility duty, by providing for a preferred service to domestic consumers, both in West Virginia and in Ohio in case of a shortage of supply adequate for all classes of consumers, and by providing for a fair apportionment of the available supply among the several communities to which the gas is to be transported. We are aware of the doctrine of this court enunciated in the case of Hudson Water Co. vs. McCarter, 209 U. S., 349, at 357, that

> "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject matter. Knoxville Water Co. vs. Knox, 189 U. S., 434, 438; Manigault vs. Springs, 199 U. S., 473, 480. But the contract, the execution of which is sought to be prevented here, was illegal when it was made."

The contracts shown by the evidence in this case, however, had no infirmity when made. They were contracts looking to a provision of a supply of gas to maintain a valuable public service. They make no discrimination, they amount simply to agreements to produce and supply an amount of gas, so long as it can be produced and supplied, which will justify the other contracting party in making expenditures which will provide facilities for the service of natural gas to communities. They offend against no public utility duty which either party to them owes. They offend only in that they agree to give

natural gas to companies for use outside the State of West Virginia. Upon no theory, except one which assumes the legality of legislation which discriminates against interstate commerce, can they be said to have any infirmity which permits of their being destroyed.

Even assuming the right of a state, as an original proposition, to restrain the exportation of commodities in interstate commerce, nevertheless it could not under our constitutional limitations permit such exportation while expensive channels and facilities for such exportation are being established and contracts are made and property is acquired which depends for its whole value solely upon such continued exportation, and then, suddenly, and without any provision for compensation of losses caused thereby, change its policy and forbid such exportation. Robbins vs. Los Angeles, 195 U. S., 223. Such legislation does not strike at a practice deemed harmful by the legislature, but seeks, for the supposed good of the state, to take the contracts and property of others for the benefit of its own residents. This it cannot do, under our constitutional limitations, without making compensation. The statute in question makes no provision whatever for compensation, nor could it validly do so, as to contracts and property outside the state. Pine vs. Mayor of City of New York, 103 Fed., 337; Holyoke Water Power Co. v. Connecticut River Co., 52 Conn, 570; Farnum v. Canal Corp., 1 Summ., 46, Fed. Cas. 4, 675; U. S. vs. Ames, 1 Woodb. & M. 76, Fed. Cas. 14, 441; Rutz v. City of St. Louis (CC), 7 Fed., 438.

In spite of the facts, alleged in the defendant's an-

swer, at pages 9 and 10 thereof, that charters or certificates of admission granted by the State of West Virginia to corporations are subject to the express statutory right of the legislature of said state to alter any charter and to alter or repeal any law applicable to the said corporations, nevertheless the contracts and property rights of these artificial persons are not entirely without constitutional protection. Miller vs. State, 15 Wall., 478, at 498; Adirondack Ry. vs. New York State, 176 U. S., 335. This court has recently held in R. R. Co. vs. Commission of Wisconsin, 237 U. S., 220:

> "We would be very averse to deciding that without explicit declaration, every general law of the state applicable to corporations is enacted as an amendment to their charters. * * * It is one thing to decide that corporations are subject to the police power of the state, and quite another to hold that every general law is an amendment to their charters."

This is shown conclusively by the fact that the legislation is equally applicable to "persons" and "firms" as to "corporations." See Section VII of the act.

XII.

THE ACT IN QUESTION IS IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES IN THAT IT DEPRIVES THE STATE OF OHIO, AND MANY OF ITS CITIZENS AND RESIDENTS, OF PROPERTY WITHOUT DUE PROCESS OF LAW.

The enforcement of the statute in question here, would, as is shown by the evidence hereinbefore discussed, destroy property of the plaintiff state and her citizens to the value of millions of dollars, by rendering that property worthless by cutting off the supply of gas. This amounts to a violation of the rights of the plaintiff and her citizens under the Fourteenth Amendment:

> "Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

There is neither reason nor authority for holding that the clause relating to life, liberty or property, is limited to the protection of persons within the jurisdiction of the state. It was obviously intended to protect them everywhere from the effects of acts done under state authority. For example, lower riparian owners upon a stream which passes across a state line are not at the mercy of the upper state. The upper state could not validly authorize the impairment of their rights, hence

anyone, even an officer of the upper state, who undertook to impair their rights would be restrained or held liable. In the case of Pine vs. Mayor, etc., of City of New York, 103 Fed., 337, it was so held, and the court, Shipman, circuit judge, in his opinion said:

> "The statutes of the state of New York do not undertake to give power to condemn land for public purposes which is situate in another state, and if they undertook to confer such power they would be ineffective. Holyoke Water-Power Co. v. Connecticut River Co., 52 Conn., 570; Farnum v. Canal Corp., 1 Summ. 46, Fed. Cas. No. 4, 675; U. S. v. Ames, 1 Woodb. & N. 76, Fed. Cas. No. 14441; Rutz v. City of St. Louis (C. C.), 7 Fed., 438. Neither is there a Connecticut statute which authorizes the City of New York to exercise any rights of eminent domain over land in Connecticut."

The decree of the Circuit Court was affirmed by the Circuit Court of Appeals, 112 Fed., 98. That decree was reversed in this court, New York City vs. Pine, 185 U. S., 93, 22 Supt. Ct., 592, 46 L. Ed., 820, but only upon the ground that the plaintiff was guilty of laches in not earlier pressing his claim for injunction instead of compensation.

See the discussion in 8 Harvard Law Review, 136, by G. B. French and J. Smith, of the question of "Power to divert an interstate river."

The authorities just cited show further that a state cannot exercise the power of eminent domain to take or damage property which is outside the jurisdiction of the state, but that question is of no importance here since the statute in question makes no provision for compensation

for the destruction which it would, if enforced, inevitably cause. We are faced, then, by the bald situation of a state, by direct legislative action, seeking to do that which, by its natural and inevitable consequences would destroy or damage property of large value, without the slightest provision for compensation. It is a plain case of a violation of the fourteenth amendment. It could hardly be contended that the state could, validly, within its own jurisdiction provide that the supply of gas which is now, and for many years past has been, conveyed and served to one of its communities, should be cut off from that community and served to another exclusively, the first community being allowed to receive only the surplus which was not desired by the second community. The plain violation of all rules of public service, and the destruction of property which such a law would cause, would clearly make it invalid. It would, we believe, not be valid even though it carried a provision for compensating the persons whose property was damaged, since one public service can not be destroyed by eminent domain simply to set up another of the same kind. And yet the State of West Virginia is seeking, by the act in question, to destroy property and public service in vast amount, because they lie outside the State of West Virginia, in order to improve the condition of consumers inside the state. The destruction of property which would admittedly result from the enforcement of this statute renders this legislation offensive to the fourteenth amendment.

The statement made in Division VII, on page 32, of

the defendant's answer, that the losses and inconveniences, if any, which may result from the enforcement of this act, are and will be **damnum asque injuria** is but an argument in a vicious circle. Such argument would justify any destructive legislation. Of the numerous cases holding that legislation which results in the destruction of innocuous property is invalid under the fourteenth amendment, we cite the following: Eubank vs. Richmond, 226 U. S., 137; Dobbins vs. Los Angeles, 195 U. S., 223.

XIII.

THE VALIDITY OF THE ACT MUST BE DETERMINED FROM ITS LANGUAGE AND ITS NECESSARY OPERATION AND EFFECT.

The proofs taken in this case show conclusively that the necessary operation and effect of the statute, if enforced, will be to divert to intrastate uses, large quantities of gas which is now being transported from the State of West Virginia into the State of Ohio and other states. The fact that the enforcement of the statute would be harsh and inequitable, and would cause great suffering, inconvenience, and financial loss to the gas consumers outside the State of West Virginia, for the sake of rendering an adequate supply of natural gas to be grossly used in manufacturing industries in West Virginia, and misused in carbon black plants there, might lend some countenance to the contention that the statute would not be enforced to bring about such consequences. The answer

of the defendant on page 40, however, admits that it is its intention to enforce the statute and to impose the penalties therein provided, in case of its violation. However, even though the State of West Virginia should deny its intention to enforce the statute, nevertheless the established rules of construction require that a statute be construed according to its reasonable interpretation, with no regard to any disclaimer on the part of the state enacting it, of its intention to enforce it.

Mr. Justice Harlan, in Western Union Telegraph Company vs. Kansas, 216 U. S., 1, in delivering the opinion of the court which declared unconstitutional an act of the State of Kansas, said:

> "But it is said that none of the authorities cited are pertinent to the present case, because the state expressly disclaims any purpose by the statute in question to obstruct or embarrass interstate commerce, but seeks only to prevent the telegraph company from entering the field of domestic business in Kansas without its consent, and without conforming to the requirements of its statute. But the disavowal by the state of any purpose to burden interstate commerce can not conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things. Such is an established rule

of constitutional construction, as the cases abundantly show."

Mr. Chief Justice Marshall, in Brown vs. Maryland, 12 Wheaton, 419, said, concerning such a contention:

> "We are told that such wild and irrational abuse of power is not to be apprehended, and is not to be taken into view, when discussing its existence. All power may be abused; and if the fear of its abuse is to constitute an argument against its existence, it might be urged against the existence of that which is universally acknowledged, and which is indispensable to the general safety. The states will never be so mad as to destroy their own commerce, or even to lessen it.
>
> We do not dissent from these general propositions. We do not suppose any state would act so unwisely. But we do not place the question on that ground."

See also Bethlehem Motors Corporation v. Flynt, Advance Opinions 1921, page 687, Supreme Court Reporter, July 1, 1921, page 571, in which case it was practically admitted that the statute in question, even if it attempted a discrimination, would in practice be "futile." On this point Mr. Justice McKenna said, concerning this argument of the attorney general of the state:

> "May we accept his view of it, that is, regard the condition as a mere brutum fulmen, imposing no condition or burden, against the decision of the Supreme Court of the state? The court has assumed its efficacy and regarded it as a legal condition. * * * We are unable to concur in this conclusion. It is a perilous power to concede to the state, and it is immediately manifest that it can be exerted to prevent all commerce of those corporations (or other corporations) with the state except as the commerce

> might be through direct personal purchases and importations. In other words, the power can be exerted to exclude the products of those corporations, and every other corporation, if they have, or it has, agents in the state."

The answer of the State of West Virginia does deny that the statute was passed for the purpose of preventing the transportation of gas beyond the borders of West Virginia. (Answer, pages 38, 39). The operation and effect of the statute, however, and not the intention with which it was enacted, have always been held to be the controlling factors.

In the case of Kansas City Railway Co. vs. Kansas, 240 U. S., 227, at page 231, Mr. Justice Hughes, in delivering the opinion of the court, said:

> "And, further, in determining whether a tax has such a direct relation to interstate commerce as to be an exercise of power prohibited by the commerce clause, our decision must regard the substance of the exaction—its operation and effect as enforced—and can not depend upon the manner in which the taxing scheme has been characterized."

See also to the same effect: Looney vs. Crane, 245 U. S., 178, at 187; St. Louis Street Ry. Co. vs. Arkansas, 235 U. S., 350, 362.

In Galveston, etc., Ry. Co. vs. Texas, 210 U. S., 217, at page 227, Mr. Justice Holmes said:

> "Neither the state courts nor the legislatures, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regu-

lation in a relatively immediate way, it will not be saved by name or form. Stockard v. Morgan, 185 U. S., 27, 37; Asbell v. Kansas, 209 U. S., 251, 254, 256."

In the case of Western Union Telegraph Company vs. Foster, 247 U. S., 105, **supra**, Mr. Justice Holmes, in delivering the opinion of the court, holding unconstitutional and void an order of the Public Service Commission of Massachusetts, said:

> "Acts generally lawful would become unlawful when done to accomplish an unlawful end. United States v. Reading Co., 226 U. S., 324, 357, and a constitutional power can not be used by way of condition to attain an unconstitutional result. Western Union Telegraph Co. v. Kansas, 216 U. S., 56; Sioux Remedy Co. v. Cope, 235 U. S., 197, 203. The regulation in question is quite as great an interference as a tax of the kind that repeated decisions have held void. It can not be justified 'under that somewhat ambiguous term of police powers.' Western Union Telegraph Co. v. Pendleton, 122 U. S., 347, 359; Leisy v. Hardin, 135 U. S., 100; Savage v. Jones, 225 U. S., 501, 520; Western Union Telegraph Co. v. Brown, 234 U. S., 542, 547."

The language used here and the cases supporting it are applicable to the instant case. The consequences of the act in question, as shown by the evidence, would be the prohibition or restriction of interstate commerce, the destruction of property, and the impairment of contracts. These unlawful consequences must, under the rule of the above decisions, ivalidate the statute, regardless of the avowals in the defendant's answer that its only purpose is to require adequate service by public service companies.

CONCLUSION.

By direction and authority of the legislature and the governor of the State of Ohio, this action is brought, seeking to repeal what it regards as an illegal attack upon its rights. While this statute is drawn with great ingenuity, its purpose and effect are obvious. The useful and unoffending property of the state, and the property of those whom the state is bound to protect, worth many millions of dollars, is threatened with destruction. The state's right, and the rights of her citizens and residents to continue to receive natural gas—the cheapest, cleanest and most convenient fuel known for domestic purposes, and upon which fuel they have become accustomed to rely—are threatened with abrupt extinguishment. Contracts, lawful and commended by all when made, for they represented a development highly valuable to the State of West Virginia, and now free from complaint except that their performance still requires the transportation of natural gas out of the State of West Virginia, are threatened with impairment and nullification. These, in the main, will be the consequences of the statute complained of, if it is held to be valid.

The fact that the State of West Virginia is willing to bring down all of these consequences upon a sister state, in fact all states that adjoin her, solely for the commercial advantage of having an adequate supply of gas for gross and wasteful use in industrial plants and for misuse

in carbon black plants, to the deprivation of natural gas for even domestic purposes beyond her state lines, might so justifiably awaken sentiments of resentment in the state so treated, that attempts at retaliation would be expected to follow. This natural consequence of such a law as the one here drawn in question is so obvious that no state, except one highly favored with natural resources, as is the State of West Virginia, would hazard its enactment. However, spurred by her declared self-interest, the State of West Virginia has enacted this remarkable law and is here defending its constitutionality upon the ground that it may require at all times an adequate service by public utilities to all consumers within the territory of West Virginia, regardless of consequences of those across her state lines. This court is asked to discover some magic force and authority in the words "adequate service" which the court has never been able to discover in the words "police power," "state rights," "conservation" or words of similar import, and which shall be made to over-ride the provisions of the constitution of the United States.

The fact that the defendant state may regard itself as so favorably situated that it can "live unto itself alone," granting no favors and asking none, fortunately, does not determine the rights of the State of Ohio. The framers of the constitution were well aware, from their observation of "state" nature, that the states could not and would not give up their powers of making war, of embargo, entering into treaties and diplomatic negotiations with one another, unless they were given in return posi-

tive legal guaranties which would remove the ordinary causes of friction and strife among the several states. These guaranties, so required, were provided by the constitution. That document as interpreted by this court, positively secures to the State of Ohio its rights herein asserted. These rights are deliberately violated by the statute in question. This violation clearly entitles this complainant to the relief prayed for in its bill of complaint.

The State of Ohio further believes that a decision upholding the statute in question would not only cause great inconvenience and suffering, destroy property, contracts and other rights which it is her duty to protect, but would, when pursued to its natural conclusion, seriously endanger the Union itself, by creating a condition of commercial anarchy. The situation is no less critical than that which confronted this court in the earlier cases, now regarded as epoch making, and in which cases, it is now agreed, erroneous decision would have brought disaster. The wisdom and soundness of those decisions have been proven by long experience under them. We believe that a decision upholding this statute would be a departure from and repudiation of the basic principle of those cases and be an abrupt turning backward.

Confident that this, the Supreme Court of the states united under and subject to the constitution, will decree continued maintenance of those basic principles, by holding void this statute, that we may go on, as in the

past, in matters of commerce one and the same people and without reference to state lines.

Respectfully submitted,

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Attorney General of Ohio.

E. E. CORN,
Special Counsel.

FREEMAN T. EAGLESON,
R. G. ALTIZER,
Of Counsel.

THERE HAS BEEN NO DISCRIMINATION AGAINST CONSUMERS IN WEST VIRGINIA.

The testimony taken bearing upon the question of whether the gas companies operating in West Virginia have discriminated against their West Virginia consumers shows that such discrimination has not taken place. The average domestic consumer in Charleston, West Virginia, in the year 1919, used 175,000 cubic feet of gas for the year. The average domestic consumer in the city of Cincinnati, Ohio, for the same year, used 84,000 cubic feet of gas; the average domestic consumer in the city of Portsmouth, Ohio, during the same year used 137,000 cubic feet of gas. (Record, page 368).

The testimony of the witness, Anderson, at page 823 of the record, is as follows:

> "A. The average annual consumption per domestic consumer for the year 1918, for the different states, is as follows:
>
> West Virginia .....164.89 thousand cubic feet
> Pennsylvania .....124.34 thousand cubic feet
> Ohio .....110.65 thousand cubic feet
> Kentucky ..... 87.21 thousand cubic feet
> Indiana ..... 78.25 thousand cubic feet
> 22 other states..... 91.80 thousand cubic feet"

The true situation is shown graphically by Pennsylvania Exhibits 42, 43, 44 and 45, prepared by the witness, Wyer, and appearing at pages 1594 to 1597 of the record herein. Copies of these exhibits are inserted herein and show conclusively that the average consumption in West Virginia is and has been much greater than in Ohio.

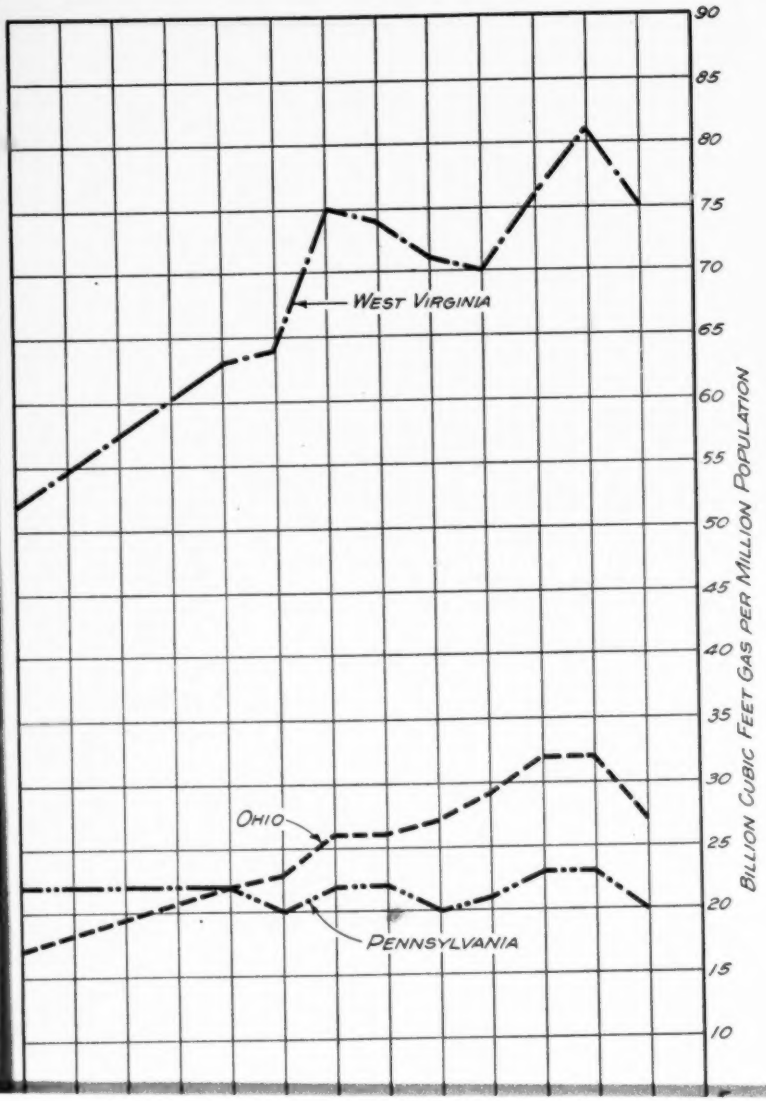
PENNSYLVANIA EXHIBIT 42.

Offered at p. 897 of Printed Record by Witness Wyer.

Billion Cu. Ft. of Natural Gas Consumption Per 1,000,000 Population for West Virginia, Ohio, and Pennsylvania.

BILLION CUBIC FEET NATURAL GAS CONSUMED PER MILLION POPULATION IN WEST VIRGINIA, OHIO AND PENNSYLVANIA

The population data were furnished by the Bureau of the Census and the natural gas data by the United States Geological Survey.



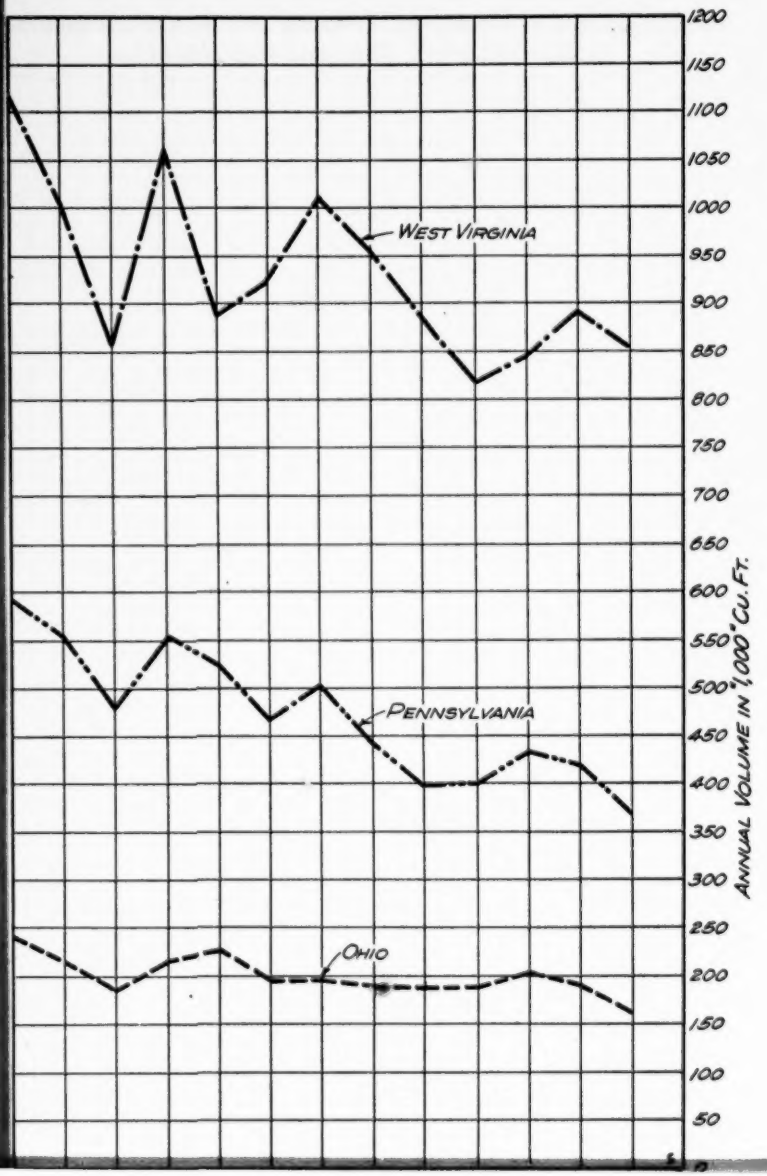
PENNSYLVANIA EXHIBIT 43.

Offered at p. 897 of Printed Record by Witness Wyer.

Total Natural Gas Consumed Annually per Domestic Consumer in West Virginia, Ohio, and Pennsylvania.

TOTAL NATURAL GAS CONSUMED ANNUALLY PER DOMESTIC CONSUMER IN WEST VIRGINIA, OHIO AND PENNSYLVANIA

Based on data compiled by the United States Geological Survey.



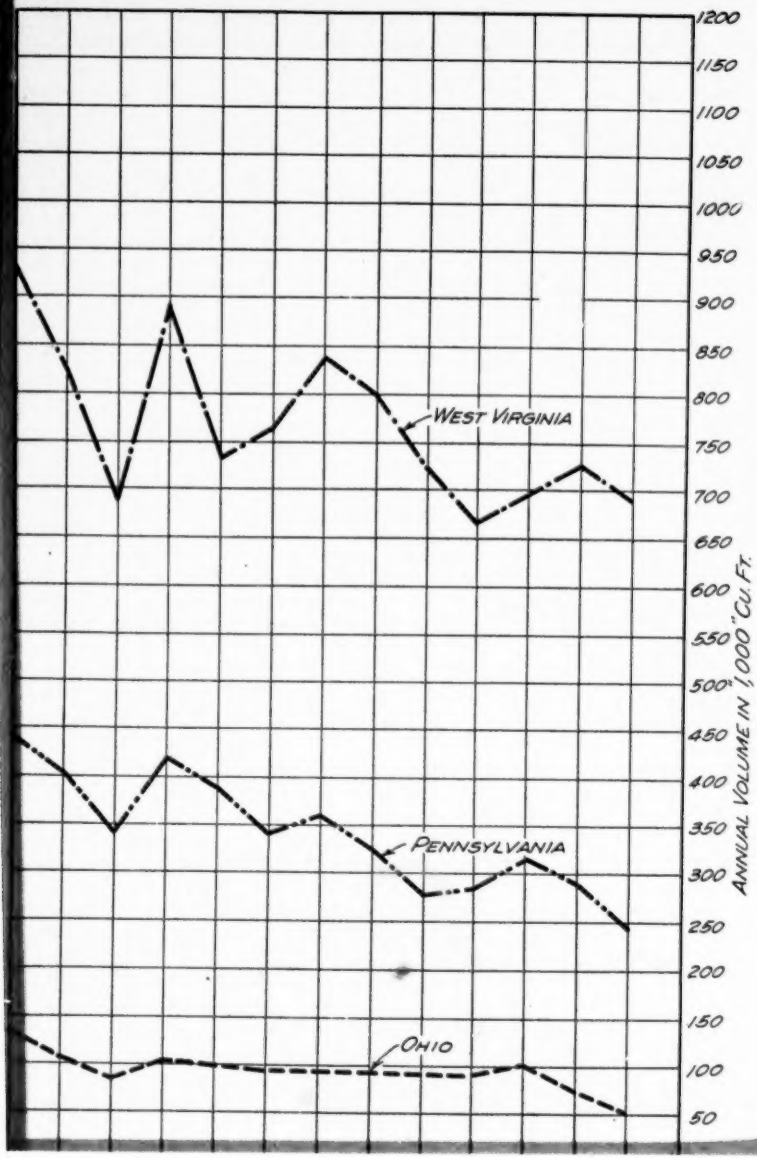
PENNSYLVANIA EXHIBIT 44.

Offered at p. 897 of Printed Record by Witness Wyer.

Industrial Natural Gas Consumed Annually per Domestic Consumer in West Virginia, Ohio and Pennsylvania.

INDUSTRIAL NATURAL GAS CONSUMED ANNUALLY PER DOMESTIC CONSUMER IN WEST VIRGINIA, OHIO AND PENNSYLVANIA

Based on data compiled by the United States Geological Survey.



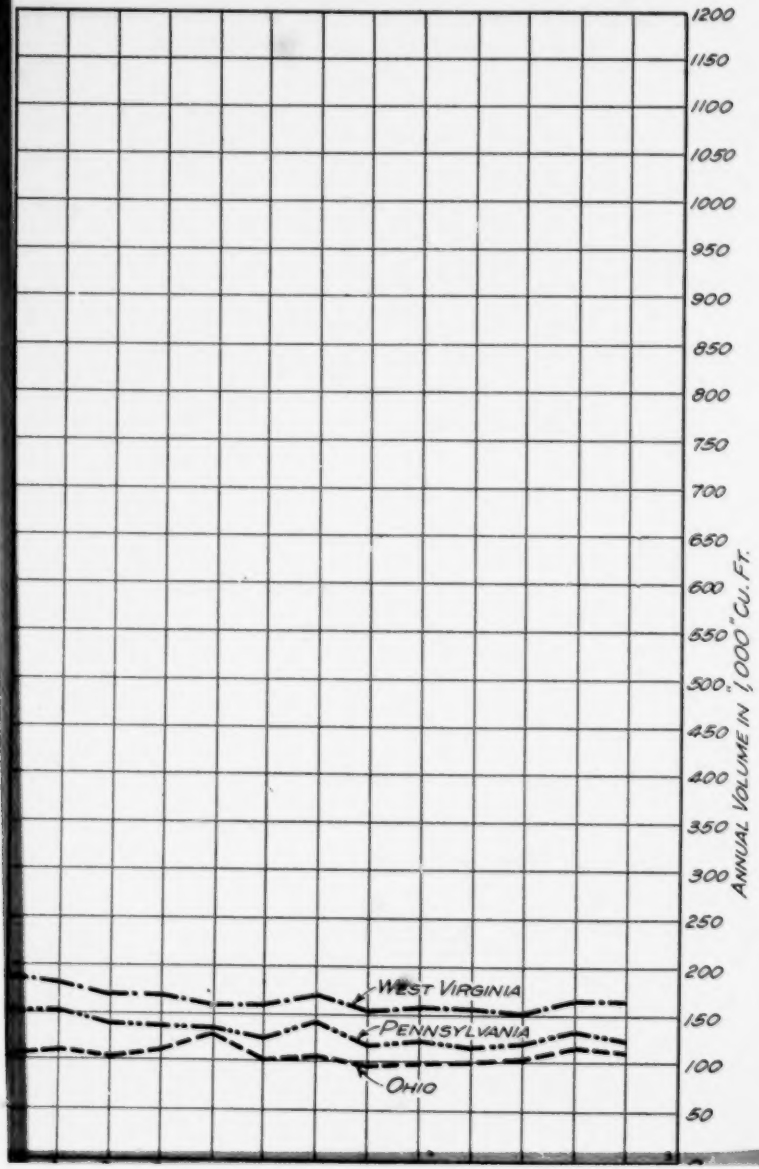
PENNSYLVANIA EXHIBIT 45.

Offered at p. 898 of Printed Record by Witness Wyer.

Domestic Gas Consumed Annually per Domestic Consumer in West Virginia, Ohio, and Pennsylvania.

DOMESTIC NATURAL GAS CONSUMED ANNUALLY PER DOMESTIC CONSUMER IN WEST VIRGINIA, OHIO AND PENNSYLVANIA

Based on data compiled by the United States Geological Survey.



There is no support whatever in the testimony for the proposition that gas consumers in West Virginia on the lines of these interstate gas companies have not received at least their full proportionate share of the total supply of gas. In fact, the contract between The Hope Natural Gas Company and The East Ohio Gas Company, being Pennsylvania Exhibit 19, and appearing at page 1544 of the record herein, provides, in its seventh paragraph, that the domestic consumers of the Hope Company in West Virginia shall be at all times supplied in full by the Hope Company in preference to consumers of the companies outside the state to which the Hope Company sells gas.

The contracts between The Hope Natural Gas Company and The Peoples Natural Gas Company, Pennsylvania Exhibit 17, (record, p. 1524); the contract between The Hope Natural Gas Company and The Northwestern Ohio Natural Gas Company, Pennsylvania Exhibit 16, (record, p. 1509); the contract between The Mountain State Gas Company and The River Gas Company, Pennsylvania Exhibit 20, (record, p, 1554); the contract between The Hope Natural Gas Company and The Fayette County Gas Company, Pennsylvania Exhibit 21, (record, p. 1560); the contract between The United Fuel Gas Company and The Ohio Fuel Supply Company, West Virginia Exhibit 38, (record, p. 1761), all provide specifically for a preference for the domestic consumers in West Virginia upon the lines of the supplying company or upon the lines of other companies in West Virginia furnished gas by the supplying company. These companies, then, are now giving a preference to West Virginia domestic consumers.

PRESENT STATUS OF THE AVAILABLE GAS SUPPLY—DECLINE AND SHORTAGE.

There is no dispute as to the present lack of an adequate supply of natural gas and that this inadequacy extends to all the communities throughout the plaintiff states.

It is due to a decline in the old fields, not now supplemented by new discoveries; the gas operators do not know where to turn for new fields. It is also due to the increasing demand through the natural growth of prosperous communities served in all the states involved, and to the enormous demand during war years when the supply was drained by a continuous delivery night and day to industrial plants, pursuant to orders of the United States government. (Record, pp. 333, 334).

Natural gas is not used only for cooking and hot water heating as is manufactured gas, but is used generally for house heating in grates, stoves and furnaces which in communities using manufactured gas are heated with coal. This fact contributes much to the very great peak load demand which falls upon the natural gas company when cold weather begins. On cold days when the consumer lights his grate, stove and furnace, the demand is from fifteen to eighteen times the demand on warm days. The necessity of conserving gas with which to meet the peak demands, at morning, noon and evening for cooking purposes, is imperative. It is on these cold days that a withdrawal or diminution of the gas supply would cause

extreme suffering, for many communities and thousands of consumers have no substitute heating appliances or substitute fuel. (Quay, 29; Sullivan, 211; Tonkin, 423-421; Angle, 553-562; Reed, 524).

Much of defendant's testimony is made up of statistics to show what proportion of West Virginia gas produced is exported as compared with volumes consumed in the State. As corrected by figures given by witness, Robinson, page 1380, it appears that in 1919, 36 per cent. of the West Virginia production was used in the State and 64 per cent. exported to five other states.

These figures show annual volumes; to get a daily demand it does not follow that the annual volume can be divided by 365 days; on the contrary, the whole issue of this case is focused not upon an average daily or yearly volume, but upon the **cold day** demand. The proof is conclusive that were West Virginia by this statute to obtain a reasonably adequate supply for all its inhabitants and industries, either the entire supply will be taken and the consumer in Pennsylvania and Ohio will get no gas; or such part of the supply will be taken that the service for Pennsylvania and Ohio, for any class of consumers, is completely broken down, and in either case the citizens of those states are the victims of discrimination.